

Exhibit G

1 **WEILAND, GOLDEN,
SMILEY, WANG EKVALL & STROK, LLP**
2 Evan D. Smiley, State Bar No. 161812
esmiley@wgllp.com
3 Hutchison B. Meltzer, State Bar No. 217166
hmeltzer@wgllp.com
4 Robert S. Marticello, State Bar No. 244256
rmarticello@wgllp.com
5 650 Town Center Drive, Suite 950
Costa Mesa, CA 92626
6 Telephone: 714-966-1000
Facsimile: 714-966-1002
7
8 Attorneys for Alfred H. Siegel,
Chapter 11 Trustee

9 **UNITED STATES BANKRUPTCY COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA**

11 **SANTA ANA DIVISION**

12 In re
13 LBREP/L-Sun Cal Master I, LLC, et al.,
14 Debtor.

Case No. 8:08-bk-15588-ES

Chapter 11

(Jointly Administered with Case Nos.
8:08-bk-15637-ES; 8:08-bk-15639-ES; and
8:08-bk-15640-ES)

15 Affects LBREP/L-SunCal Master I,
16 LLC, Only
17 Affects LBREP/L-SunCal McAllister
Ranch, LLC, Only
18 Affects LBREP/L-SunCal
McSweeny Farms, LLC, Only
19 Affects LBREP/L-SunCal
Summerwind Ranch, LLC, Only
20 X Affects All Debtors.

**MOTION TO APPROVE AMENDED AND
RESTATED COMPROMISE BETWEEN
THE TRUSTEE, THE OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS, AND LEHMAN
COMMERCIAL PAPER INC., IN ITS
INDIVIDUAL CAPACITY AND AS
ADMINISTRATIVE AGENT FOR THE 1st
LIEN LENDERS; MEMORANDUM OF
POINTS AND AUTHORITIES; AND
DECLARATION OF EVAN D. SMILEY IN
SUPPORT**

[The Declaration of Alfred H. Siegel in
Support of the Motion to be Filed
Separately]

DATE: December 21, 2010
TIME: 9:30 a.m.
PLACE: Courtroom 5A
411 W. Fourth St.
Santa Ana, CA 92701

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. BACKGROUND	3
A. General Background	3
B. Significant Post-Petition Events	4
1. The LCPI Stay Relief Motions	4
2. Trustee's Use of Cash Collateral.....	5
3. The First Compromise Motion	6
4. The Trustee's Stay Relief Motion	7
C. Pre-Petition Events Giving Rise to Claims Against LCPI	9
1. The First and Second Lien Credit Agreement	9
2. The Third Lien Credit Agreement	10
3. The Debtors' Alleged Defaults Under The Lien Credit Agreements.....	10
III. PROPOSED SETTLEMENT.....	11
IV. LEGAL ANALYSIS.....	17
A. The Probability of Success in The Litigation	18
B. The Difficulties to be Encountered in The Matter of Collection	21
C. The Complexity, Expense, Inconvenience, and Delay	22
D. The Paramount Interests of Creditors	24
E. Approval of The Amended Term Sheet Will Not Alter or Prejudice The Rights of Third Parties	26
V. CONCLUSION.....	27
DECLARATION OF EVAN D. SMILEY.....	28

1 **TABLE OF AUTHORITIES**

		<u>Page</u>
3	<u>CASES</u>	
4	<i>In re A & C Props.,</i> 784 F.2d 1377 (9th Cir. 1986).....	17, 18
5	<i>In re America West Airlines, Inc.,</i> 214 B.R. 382 (Bankr. D. Ariz. 1997)	18
6	<i>In re Hermitage Inn, Inc.,</i> 66 B.R. 71 (Bankr. D. Colo. 1986)	18
7	<i>In re Mickey Thompson Entertainment Group, Inc.,</i> 292 B.R. 415 (B.A.P. 9th Cir. 2003).....	18
8	<i>In re Palmdale Hills Property, LLC,</i> 2009 WL 5812119 (B.A.P. 9th Cir. 2009)	8
9	<i>In re Schmitt,</i> 215 B.R. 417 (B.A.P. 9th Cir. 1997).....	18
10	<i>In re World Health Alternatives, Inc.,</i> 344 B.R. 291 (Bankr. D. Del. 2006)	18
11		
12		
13		
14		
15	<u>STATUTES</u>	
16	11 U.S.C. § 1123(a)(5)(D)	13
17		
18	<u>OTHER AUTHORITIES</u>	
19	Federal Rules of Bankruptcy Procedure 9019(a)	16, 17
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **TO THE HONORABLE ERITHE A. SMITH, UNITED STATES BANKRUPTCY JUDGE:**

2 Alfred H. Siegel (the "Trustee"), the chapter 11 trustee of the jointly administered
3 estates of LBREP/L-SunCal Master I, LLC (the "Parent Debtor"), and LBREP/L-SunCal
4 McAllister Ranch, LLC, LBREP/L-SunCal McSweeny Farms, LLC, and LBREP/L-SunCal
5 Summerwind Ranch, LLC (collectively, the "Subsidiary Debtors," and together with the
6 Parent Debtor, the "Debtors"), submits this Motion (the "Motion") to Approve the Amended
7 and Restated Compromise Between the Trustee, the Official Committee of Unsecured
8 Creditors (the "Committee"), and Lehman Commercial Paper Inc. ("LCPI"), in its individual
9 capacity and as administrative agent for the 1st Lien Lenders. In support of the Motion,
10 the Trustee submits the following memorandum of points and authorities, and the
11 attached Declaration of Evan D. Smiley. The Declaration of Alfred H. Siegel in support of
12 the Motion will be filed separately.

13

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. INTRODUCTION**

16 By this Motion, the Trustee requests approval of an amended and restated term
17 sheet (the "Amended Term Sheet") between the Trustee, the Committee, and LCPI, in its
18 individual capacity and as the administrative agent for the first-position secured lenders
19 (the "1st Lien Lenders"), a copy of which is attached hereto as Exhibit "1."

20 On October 9, 2009, the Trustee filed a motion to approve the original term sheet
21 between the Trustee, the Committee, and LCPI (the "Original Term Sheet"). However,
22 following the filing of the compromise motion, a dispute arose between the Trustee and
23 the Committee, on the one hand, and LCPI, on the other hand, regarding the
24 interpretation of the Original Term Sheet. The parties tried, but were initially unable to
25 resolve their disputes, and the Trustee began to pursue other alternatives to administer
26 the Debtors' estates. The Trustee selected a broker to market and sell the Debtors' real
27 property assets, and the Trustee negotiated and entered into an asset purchase
28 agreement with a prospective buyer. The Trustee also filed a motion for relief from the

1 automatic stay in LCPI's bankruptcy case pending in the United States Bankruptcy Court
2 for the Southern District of New York (the "New York Bankruptcy Court") to, among other
3 things, sell the properties free and clear of LCPI's asserted liens and to deny LCPI's credit
4 bid rights, which was initially heard on July 14, 2010. The New York Bankruptcy Court
5 continued the hearing on the Trustee's stay relief motion for one month and strongly
6 suggested to the parties that they resume their settlement discussions in the meantime.
7 As a result of the renewed discussions, the Trustee, the Committee, and LCPI have now
8 resolved their differences regarding the interpretation of the original term sheet.

9 The Amended Term Sheet is fair and reasonable and its approval is in the best
10 interests of the Debtors' bankruptcy estates. Like the Original Term Sheet, the Amended
11 Term Sheet resolves all of the disputes between the Debtors' estates and LCPI. The
12 Amended Term Sheet resolves the estates' claims against LCPI, LCPI's stay relief
13 proceeding, the Trustee's stay relief proceeding, and all disputes between the parties
14 related to the use of cash collateral and the sale of the Debtors' real property. As a result,
15 approval of the Amended Term Sheet will save the estates significant administrative
16 expense and will eliminate the risk associated with litigation. In large part, the terms of the
17 parties' agreement remain the same. The parties have, however, made a few important
18 changes to resolve their disputes regarding the interpretation of the original term sheet.
19 The Trustee believes that the Amended Term Sheet is economically better for the
20 Debtors' estates, and the revisions should also resolve certain of the prior objections to
21 the compromise. The Committee, which entity represents the interests of unsecured
22 creditors, has been involved in the negotiations regarding the Amended Term Sheet and
23 supports its approval by the Court.

24 Under the Amended Term Sheet, the Debtors' real property will be sold through a
25 plan, subject to LCPI's right to credit bid as provided in the Amended Term Sheet. Upon
26 the entry of a final order granting this Motion, the Debtors' estates will receive over \$5.7
27 million in cash. Of this sum, \$3.7 million will immediately be available for use by the
28 Trustee to administer the Debtors' cases and to pursue the estates' claims against other

1 third parties. The remaining \$2.0 million will be used to maintain and preserve the
2 Debtors' real property pending sale, and, thereafter, any surplus will be paid to LCPI.
3 Through the plan contemplated under the Amended Term Sheet, 50% of any net
4 avoidance action or other litigation recoveries will be paid to the Debtors' estates to
5 distribute solely to unsecured trade creditors. The Debtors' estates will also be entitled to
6 3.5% of any net recovery from the sale of the Debtors' real property to a third party,
7 whether through the plan or subsequently by LCPI. Thus, under the Amended Term
8 Sheet, the Debtors' estates have the potential to recover significant funds in the future for
9 distribution to unsecured trade creditors.

10 Based on the foregoing, the Trustee requests that the Court enter an order
11 approving the Amended Term Sheet.

12

13 **II. BACKGROUND**

14 **A. General Background**

15 On or about September 10 and 11, 2008 (the "Petition Dates"), involuntary petitions
16 under chapter 11 of the Bankruptcy Code were filed against the Debtors. The Debtors'
17 bankruptcy cases are being jointly administered pursuant to an order of this Court entered
18 on November 13, 2008. On or about October 29, 2008, the Court entered an order
19 approving Alfred H. Siegel's appointment as the chapter 11 trustee.

20 The Parent Debtor is a holding company, established to fund the real estate
21 development projects owned by each of its four operating subsidiaries, *i.e.*, the Subsidiary
22 Debtors and LBREP/L-SunCal Patterson Ranch, LLC.¹ Ninety percent (90%) of the
23 Parent Debtor is owned by LBREP Lakeside SC Master I, LLC ("Lehman Lakeside"),
24 which is an affiliate of Lehman Bros. Real Estate Partners, LP ("LBREP").² The remaining
25 equity interests in the Parent Debtor are owned by SCC Ranch Ventures, LLC, which is

26
27 ¹ By order entered on July 30, 2010, the Trustee abandoned the Parent Debtor's membership interest
in LBREP/L-SunCal Patterson Ranch, LLC.

28 ² Both LCPI and LBREP are affiliates of Lehman Brothers Holding, Inc.

1 an affiliate of SCC Acquisitions, Inc. d/b/a SunCal Companies. Lehman Lakeside is the
2 managing member of the Parent Debtor.

3 The Parent Debtor's primary asset, other than cash, is its interests in its operating
4 subsidiaries. The Parent Debtor is the sole equity member of the Subsidiary Debtors,
5 each of which, in turn, owns a real estate development project bearing the same name
6 (each, a "Property" and collectively, the "Properties"). The Parent Debtor also has cash in
7 accounts with a current aggregate balance of over \$13 million, which cash was formerly
8 held in a "Development Account" established under the LCPI loan documents.

9 As discussed in further detail below, LCPI, as administrative agent for the 1st Lien
10 Lenders, asserts a first priority lien against the Properties and the Parent Debtor's cash for
11 the full amount of the loans to the Parent Debtor and guaranteed by the Subsidiary
12 Debtors. The second-position secured lenders (the "2nd Lien Lenders") and the third-
13 position secured lenders (the "3rd Lien Lenders" and collectively with the 1st Lien Lenders
14 and the 2nd Lien Lenders, the "Lien Lenders") also assert liens against the Properties and
15 the Parent Debtor's cash. The Trustee estimates that there is approximately \$60 million in
16 non-lender debt based upon the Debtors' schedules and claims filed in the cases.

17 **B. Significant Post-Petition Events**

18 **1. The LCPI Stay Relief Motions**

19 On October 2, 2008, LCPI filed four motions for relief from the automatic stay, one
20 in each individual case (the "LCPI Stay Relief Motions"), which were originally scheduled
21 for hearing on October 28, 2008. The Court continued the hearing to November 20, 2008,
22 to allow the Trustee an opportunity to analyze the motions and prepare a response, if
23 necessary, thereto. Both the Trustee and the Committee opposed the LCPI Stay Relief
24 Motions, in part, because they disputed the amount and validity of LCPI's security
25 interests. Following a hearing on October 28, 2008, the Court set the LCPI Stay Relief
26 Motions for an evidentiary hearing on February 6, 2009 (the "Evidentiary Hearing"). The
27 Court also set certain related deadlines to designate experts, file expert reports, and file
28

1 trial briefs. To prepare for the Evidentiary Hearing, the Trustee sought discovery from
2 LCPI and certain third parties.

3 The Trustee and LCPI entered into multiple stipulations to continue the Evidentiary
4 Hearing and extend the related deadlines, which were approved by the Court, and the
5 Evidentiary Hearing was ultimately continued to June 19, 2009. However, in connection
6 with the prior settlement discussions between the Trustee and LCPI, the parties entered
7 into a stipulation to take the Evidentiary Hearing off calendar, and to suspend the related
8 deadlines and discovery, subject to the parties' rights to re-notice and/or reinstate the
9 same. Absent a settlement, the Trustee expects that LCPI will ultimately re-notice the
10 Evidentiary Hearing and seek stay relief to foreclose on its interests in the Properties and
11 the Parent Debtor's cash.

12 **2. Trustee's Use of Cash Collateral**

13 During these cases, the Trustee has been authorized to use cash collateral on
14 substantially the same terms and conditions; solely to pay the expenses necessary to
15 preserve and maintain the value of the Properties and protect these estates from liability.
16 On a number of occasions, such as during the parties' prior settlement discussions, the
17 Trustee and LCPI stipulated to the use of cash collateral. However, on other occasions,
18 the Trustee has been required to seek authorization to use cash collateral by motion. In
19 all, the Trustee has filed seven motions for authority to use cash collateral, the majority of
20 which have been opposed by LCPI.

21 Unable to reach an agreement with LCPI regarding the use of cash collateral
22 beyond November 30, 2009 (due to the break down in negotiations related to the Original
23 Term Sheet), the Trustee filed motions for the use of cash collateral through December
24 31, 2009, March 31, 2010, and June, 30, 2010. LCPI filed a limited objection to each
25 motion, and each motion was granted over LCPI's limited objection. On May 27, 2010,
26 the Trustee filed a motion for authority to use cash collateral through and including
27 September 30, 2010. LCPI filed an opposition to the motion. On June 17, 2010, the
28 Court heard and granted the motion over LCPI's opposition. On June 25, 2010, the Court

1 entered an *Order Granting Motion for Order Authorizing Use of Cash Collateral Through*
2 *September 30, 2010* (the "Cash Collateral Order"). On July 9, 2010, LCPI filed a notice of
3 appeal of the Cash Collateral Order (the "Appeal"). In light of the Amended Term Sheet,
4 the Trustee and LCPI are currently preparing a stipulation to stay the Appeal until March
5 31, 2011. If the Amended Term Sheet is approved by this Court and the New York
6 Bankruptcy Court, then the Appeal will be dismissed.

7 As discussed in further detail below, under the Amended Term Sheet, the Trustee
8 will receive \$2.0 million in cash collateral solely to maintain and preserve the Properties,
9 thereby avoiding further cash collateral disputes and the Appeal. The Trustee will also
10 receive \$3.7 million, which will enable the Trustee to fully administer these estates, as
11 opposed to only to preserve and maintain the Properties.

12 **3. The First Compromise Motion**

13 On October 9, 2009, after months of negotiations, the Trustee filed a motion (the
14 "First Compromise Motion") to approve the Original Term Sheet. The First Compromise
15 Motion was, for various reasons, opposed by multiple third parties. The First Compromise
16 Motion was initially heard on November 3, 2009. This Court continued the hearing on the
17 First Compromise Motion to December 17, 2009. On November 25, 2009, the Trustee
18 filed an *ex parte* motion to further continue the hearing on the First Compromise Motion
19 for 30-45 days to allow the Trustee an opportunity to resolve the objections to the First
20 Compromise Motion. On December 2, 2009, the California Bankruptcy Court entered an
21 order granting the Trustee's *ex parte* motion and continuing the hearing on the First
22 Compromise Motion to February 2, 2010.

23 Certain of the issues raised by the parties opposing the First Compromise Motion
24 highlighted an ambiguity in the Original Term Sheet, the interpretation of which resulted in
25 a dispute between the settling parties. More specifically, the Original Term Sheet required
26 that the Trustee attempt to settle and obtain a release of any mechanic's liens determined
27 to be senior to the liens of LCPI (the "Senior Liens") using LCPI's title insurance and \$1.5
28 million of cash collateral set aside for that purpose (the "Senior Lien Reserve Fund"). If all

1 the Senior Liens were released, then the Trustee could retain any unused portion of the
2 Senior Lien Reserve Fund. However, based on the structure of the Original Term Sheet,
3 the title insurance company, Fidelity National Title Insurance Company ("Fidelity"),
4 objected to the First Compromise Motion arguing that it could potentially deny coverage.
5 If Fidelity was correct, the title insurance could not be used to settle any Senior Liens,
6 leaving only the \$1.5 million Senior Lien Reserve Fund to resolve the Senior Liens.

7 The dispute between the Trustee and the Committee, on one hand, and LCPI, on
8 the other hand, arose regarding the impact on the Original Term Sheet, if any Senior
9 Liens were not released. LCPI took the position that the Trustee was entitled to only the
10 \$3 million set aside to pay administrative expenses, and that LCPI could foreclose on the
11 Properties. The Trustee and the Committee, in contrast, believed that, under such
12 circumstances, other benefits under the Original Term Sheet, e.g., the "Trade Creditor
13 Allocation" and the "Trustee's Participation," would remain in tact. The Trustee, the
14 Committee, and LCPI attempted to resolve the dispute regarding the interpretation of the
15 Original Term Sheet, and the hearing on the First Compromise Motion was continued on
16 multiple occasions to give the parties an opportunity to reach a consensual resolution.
17 However, the parties were unable to resolve their differences. As a result, on January 25,
18 2010, the Trustee filed a notice of withdrawal of the First Compromise Motion. By letter
19 dated March 30, 2010, LCPI notified the Trustee of its termination of the proposed
20 settlement.

21 **4. The Trustee's Stay Relief Motion**

22 Following the break down in negotiations with LCPI, the Trustee began diligently
23 pursuing other alternatives. The Trustee decided to sell the Properties free and clear of
24 liens and other interests, subject to overbid, and to pursue the estates' claims against
25 LCPI and the other 1st Lien Lenders and certain of LCPI's affiliates. The Trustee selected
26
27
28

1 a broker, whose retention is subject to Court approval,³ to market and sell the Properties.
2 The Trustee received multiple letters of intent to purchase the Properties, and the Trustee
3 entered into an asset purchase agreement with a prospective buyer, subject to Court
4 approval. The Trustee also began preparing a motion to authorize the sale of the
5 Properties free and clear of liens and other interests, for approval of overbid procedures,
6 to deny credit bid rights, and for certain related relief. However, in light of the ruling of the
7 Bankruptcy Appellate Panel of the Ninth Circuit in *In re Palmdale Hills Property,*
8 LLC, 2009 WL 5812119 (B.A.P. 9th Cir. 2009), before further pursuing the sale of the
9 Properties, the Trustee decided to seek stay relief in LCPI's bankruptcy case pending
10 before the New York Bankruptcy Court.⁴

11 On June 17, 2010, the Trustee filed a motion in the New York Bankruptcy Court for
12 relief from the automatic stay (the "Trustee's Stay Relief Motion") to, among other things,
13 sell the Properties free and clear of liens, including the asserted lien of LCPI, and to deny
14 LCPI's credit bid rights. LCPI filed an opposition to the Trustee's Stay Relief Motion. The
15 Trustee's Stay Relief Motion was initially heard on July 14, 2010. The New York
16 Bankruptcy Court continued the hearing on the Trustee's Stay Relief Motion to August 18,
17 2010, and strongly suggested to the Trustee, the Committee, and LCPI that they focus
18 their attention on attempting to resolve their differences as opposed to planning for
19 expensive and protracted litigation. As suggested by the New York Bankruptcy Court, the
20 parties engaged in further settlement discussions following the hearing and were able to
21 resolve their disputes concerning the Original Term Sheet. At the continued hearing on
22 August 18, 2010, the parties advised the New York Bankruptcy Court of the Amended
23 Term Sheet. At the request of the parties, the New York Bankruptcy Court continued the

24
25 ³ On June 16, 2010, the Trustee filed an application to employ the broker he selected, Madison
Partners. The hearing on the application to employ Madison Partners was initially held on August 3, 2010,
and was continued to September 16, 2010.

26 ⁴ On September 15, 2008, Lehman Brothers Holdings Inc. ("LBHI") filed a voluntary petition under
27 chapter 11 of the Bankruptcy Code in the New York Bankruptcy Court. Subsequently, 22 affiliates of LBHI,
including LCPI, filed voluntary petitions under chapter 11 of the Bankruptcy Code. The bankruptcy cases of
LBHI, LCPI and the 21 remaining affiliates of LBHI are being jointly administered under the lead case of
LBHI, Case No. 08-13555 (JMP). Lehman Lakeside is not a debtor.

1 hearing on the Trustee's Stay Relief Motion to September 22, 2010, to allow LCPI to file a
2 motion to approve the Amended Term Sheet to be heard on that same date. On
3 September 2, 2010, LCPI filed its motion to approve the Amended Term Sheet to be
4 heard on September 22, 2010.

5 **C. Pre-Petition Events Giving Rise to Claims Against LCPI**

6 The Trustee and his professionals have analyzed the pre-petition transactions
7 between LCPI and the Debtors. The Trustee determined that the estates hold certain
8 potential claims against LCPI and the 1st Lien Lenders. The following is a summary of the
9 relevant facts giving rise to the estates' potential claims. LCPI has indicated that it
10 strongly disputes each of Trustee's claims and assertions.

11 **1. The First and Second Lien Credit Agreement**

12 The Parent Debtor, as borrower, entered into three Lien Credit Agreements with
13 LCPI (collectively, the "Lien Credit Agreements"). Pursuant to the First and Second Lien
14 Credit Agreements, which were entered into on or around January 19, 2006, the Parent
15 Debtor borrowed a total of \$320 million (collectively, the "January 2006 Loans") as follows:
16 (1) a revolving credit facility of \$75 million and term loan facility of \$160 million under the
17 First Lien Credit Agreement; and (2) a \$85 million term loan facility under the Second Lien
18 Credit Agreement. The Parent Debtor's obligations under First and Second Lien Credit
19 Agreements were guaranteed by the Subsidiary Debtors, and these upstream guaranties
20 were secured by first and second liens against the Properties. The Subsidiary Debtors
21 also contributed approximately \$45 million to repay the existing financing secured by the
22 Properties. LCPI was a lender under the January 2006 Loans, and acted as the sole
23 administrative agent, and Lehman Brothers, Inc. ("Lehman Brothers"), served as the
24 advisor, sole lead arranger and syndication agent. Later, Gramercy Warehouse Funding
25 I, LLC, replaced LCPI as the administrative agent under the Second Lien Credit
26 Agreement.

27 Although the Debtors incurred secured debt totaling \$320 million, a significant
28 portion of proceeds from the January 2006 Loans was not available to the Debtors for

1 operations and the development of the Properties. Specifically, pursuant to the First Lien
2 Credit Agreement, the sum of \$144 million was paid directly from escrow to the Parent
3 Debtor's equity owners (the "Dividend"). The sum of \$10.6 million was paid from escrow
4 to LCPI for its arrangement and administration fee. Approximately \$62 million was
5 disbursed to Lehman Ali, Inc., to repay previous loans to the Subsidiary Debtors.
6 Approximately \$25 million was immediately set aside to fund a "Development Account,"
7 which the Debtors were not permitted to use, but served as the lenders' collateral.

8 **2. The Third Lien Credit Agreement**

9 On February 6, 2007, a Third Lien Credit Agreement was entered into by the
10 Parent Debtor, which provided for an additional \$75 million term loan (the "February 2007
11 Loan," collectively with the January 2006 Loans, the "Loans"), guaranteed again by the
12 Subsidiary Debtors and secured by third priority liens against the Properties. From the
13 \$75 million loaned to the Parent Debtor under the Third Lien Credit Agreement, \$50
14 million was paid out of escrow directly to LCPI to pay down the obligations under the First
15 Lien Credit Agreement. Just as with the January 2006 Loans, LCPI was a lender and
16 served as the administrative agent, and Lehman Brothers served as advisor, sole
17 arranger and syndication agent. Square Mile Structured Debt (One), LLC, and Square
18 Mile Structured Debt (Two), LLC, collectively, replaced LCPI as the administrative agent
19 under the Third Lien Credit Agreements.

20 **3. The Debtors' Alleged Defaults Under The Lien Credit
21 Agreements**

22 Pursuant to a Fourth Amendment and Waiver to the First Lien Credit Agreement
23 dated January 31, 2008 (the "Amendment"), the Parent Debtor was required to increase
24 the cash in the Development Account from \$25 million to \$50 million within 60 days (i.e.,
25 by March 31, 2008). However, the Parent Debtor was unable to increase the amount of
26 funds deposited in the Development Account and, as result, on March 31, 2008, LCPI
27 declared a default. LCPI also declared defaults because: (a) the Debtors missed an
28 interest payment; (b) the Debtors failed to timely deliver financial statements; and (c) the

1 Debtors failed to pay a \$100,000 administrative fee and maintain the necessary liquidity
2 requirements. Based on the alleged defaults, LCPI commenced non-judicial foreclosure
3 proceedings, which were stayed by the commencement of these cases. Trustee believes
4 that each of the defaults declared by LCPI were arguably caused by LCPI's conduct or
5 were within the control of its affiliate, Lehman Lakeside. LCPI strongly disputes this and
6 points to the Lien Credit Agreements, which it asserts were negotiated at arms-length.

7 The foregoing alleged facts were derived from the Lien Credit Agreements and
8 related documents, the closing statement for the January 2006 Loans, and certain other
9 financial information, reports, and documents produced or made available to the Trustee
10 and his counsel. Based on the facts outlined above, the Trustee and the Committee
11 believe that the estates may have the following claims against LCPI and/or the 1st Lien
12 Lenders (collectively, the "Estate Claims"): (1) equitably subordinate the claims of LCPI
13 and 1st Lien Lenders and cause the liens securing their claims to be transferred to the
14 estates; (2) avoid the security interests held by LCPI and the 1st Lien Lenders against the
15 Properties as fraudulent transfers and preserve those security interests for the benefit of
16 the estates; and (3) recover damages against LCPI for lender liability. The estates'
17 alleged claims against LCPI and the 1st Lien Lenders are more fully set out in the
18 Trustee's opposition to the LCPI Stay Relief Motions, a true and correct copy of which is
19 attached hereto as Exhibit "2."

20 As discussed below, LCPI vigorously disputes the Trustee's allegations and
21 believes that it will prevail on any action on the Estate Claims. LCPI further believes that
22 the Trustee cannot sell the Properties as proposed over its objection and that it will also
23 prevail on the LCPI Stay Relief Motions to foreclose on all real and personal property of
24 the estates, which serves as LCPI's collateral.

25

26 **III. PROPOSED SETTLEMENT**

27 In an effort to avoid the cost and uncertainty associated with litigating the Estate
28 Claims, the LCPI Stay Relief Motions, the Trustee's Stay Relief Motion, and the disputes

1 between the parties related to the use of cash collateral and the sale of the Properties, the
2 Trustee, the Committee and LCPI negotiated the Amended Term Sheet.⁵ The material
3 terms of the Amended Term Sheet are as follows:

4 1. Allowance of LCPI Claim. Upon the Settlement Effective Date,⁶ the claim of
5 the 1st Lien Lenders, for which LCPI serves as the administrative agent, will be allowed in
6 each of the Debtor's bankruptcy cases in the aggregate amount of \$230,006,233.98, plus
7 accrued and unpaid interest through the petition date and legal fees. (See Ex. 1 at ¶ B.)
8 The 1st Lien Lenders' claim shall be allowed as a secured claim in the amount of the
9 aggregate final credit or third-party bid for the Properties as discussed below, plus any
10 cash collateral received by the 1st Lien Lenders on the Settlement Effective Date, and less
11 the amount of cash paid by the 1st Lien Lenders following the Settlement Effective Date to
12 fund the reasonable and necessary expenses to preserve and maintain the Properties
13 pursuant to paragraph H of the Amended Term Sheet. The remaining amount of the 1st
14 Lien Lenders' claim will be deemed an allowed general unsecured claim against each of
15 the Debtors. (See Ex. 1 at ¶¶ B, F.)

16 2. Distributions on Settlement Effective Date.

17 a. Distribution of the Development Account Funds. The Trustee will
18 retain \$5.5 million from the funds originally held in the Development Account (the
19 "Development Account Funds"). Of this amount: (a) \$3.5 million (the "Administrative
20 Funds") will be available for the administrative expenses of the estates and for potential
21 distribution to non-lender general unsecured creditors; and (b) \$2.0 million (the
22 "Remaining Development Funds") will be retained to pay the operating expenses of the
23 Properties pursuant to an approved budget. The balance of the Development Account
24 Funds (net of the \$5.5 million retained by Trustee) will be transferred to the 1st Lien

25
26 ⁵ If there is a conflict between the summary of the compromise set forth in this Motion and the
Amended Term Sheet, the provisions of the Amended Term Sheet shall control.

27 ⁶ The Amended Term Sheet contemplates that it will be approved by both this Court and the New
York Bankruptcy Court. The Settlement Effective Date is the date that the last of the compromise orders
28 becomes a "Final Order" (as defined in the Amended Term Sheet).

1 Lenders, and will be included in the calculation of the 1st Lien Lenders' allowed secured
2 claim. (See Ex. 1 at ¶ C.1.) If the Remaining Development Funds are not sufficient, the
3 1st Lien Lenders have agreed, subject to certain conditions and limitations, to the further
4 use of cash collateral to preserve the Properties. (See Ex. 1 at ¶ H.)

5 b. Allocation of the Yucaipa Funds. The funds currently on deposit with
6 the Yucaipa Valley Water District and paid to the Trustee pursuant to that certain
7 Settlement Agreement and Release Agreement (the "Yucaipa Settlement Agreement")
8 between the Trustee and Oak Valley Partners, L.P. (the "Yucaipa Funds"), will be split
9 50/50 between the Trustee and the 1st Lien Lenders.⁷ The Trustee's 50% portion of the
10 Yucaipa Funds (the "Trustee's YFP") shall be retained by the Trustee free and clear of
11 liens, claims, interests, and encumbrances. The Trustee's YFP shall constitute additional
12 Administrative Funds and shall be immediately available for use in the administration of
13 the Debtors' cases. (See Ex. 1 at ¶ C.2.)

14 3. Sale of Properties Under the Plan. The Properties will be sold pursuant to a
15 plan under 11 U.S.C. § 1123(a)(5)(D) in accordance with bidding procedures to be
16 developed by the parties in consultation with a broker of their choosing (the "Approved
17 Broker") and approved by this Court. (See Ex. 1 at ¶ E.) The 1st Lien Lenders shall be
18 entitled to credit bid for the Properties. The initial credit bid by the 1st Lien Lenders shall
19 be in the aggregate amount of at least \$45 million (the "Aggregate Minimum Credit Bid
20 Amount") and the 1st Lien Lenders' credit bid shall not exceed the maximum credit bid
21 amount established by the parties prior to the Settlement Effective Date (the "Aggregate
22 Maximum Credit Bid Amount"). The Aggregate Maximum Credit Bid Amount and the
23 Aggregate Minimum Credit Bid Amount shall be allocated among the Properties by the
24 parties in consultation with the Approved Broker prior to the Settlement Effective Date.
25 Properties sold to the 1st Lien Lenders by way of credit bid shall be sold subject to any

26
27 ⁷ On August 13, 2010, the Trustee filed a motion to approve the Yucaipa Settlement Agreement,
which will be heard on September 30, 2010. If the Yucaipa Settlement Agreement is approved, the Trustee
expects to receive \$434,000, of which 50% will be paid over to LCPI pursuant to the Amended Term Sheet.
28

1 "Senior Liens" (defined below). Properties sold to a third party shall be sold free and clear
2 of any liens, claims, encumbrances, or interests (other than certain permitted liens, claims,
3 encumbrances or interests), with such liens, claims, encumbrances, or interests (including
4 the liens of the 1st Lien Lenders) to attach to the sale proceeds. (See Ex. 1 at ¶¶ E, F.)

5 4. Resolution of Senior Liens. The Trustee shall reasonably cooperate with the
6 1st Lien Lenders in their efforts to determine whether any liens are superior to the liens of
7 the 1st Lien Lenders against the Properties and to determine the amount of such superior
8 liens (the "Senior Liens"). However, the Trustee shall not be obligated to take any action
9 that would cause the Trustee or the Debtors' bankruptcy estates to incur material cost or
10 liability.⁸ (See Ex. 1 at ¶ J.)

11 5. Distributions Pursuant to the Plan.

12 a. Distributions of Other Recoveries. The plan will provide that all
13 proceeds recovered from sources other than the sale of the Properties or the Yucaipa
14 Funds (e.g., from fraudulent transfer litigation) ("Other Recoveries"), subject to the
15 payment of administrative and priority unsecured claims, will be split 50/50 between the 1st
16 Lien Lenders, on the one hand, and the holders of allowed claims other than the 1st, 2nd
17 and 3rd Lien Lenders (collectively, the "Trade Creditors") (on an administratively
18 consolidated pro rata basis), on the other hand, until the Trade Creditors are paid in full
19 (the "50/50 Distribution Scheme"). If, under the Amended and Restated Intercreditor
20 Agreement among the 1st, 2nd and 3rd Lien Lenders (the "Intercreditor Agreement"), Other
21 Recoveries paid to the 2nd and 3rd Lien Lenders must be paid to the 1st Lien Lenders, then
22 the Other Recoveries shall be split 50/50 between the 1st Lien Lenders and the Trade

23
24
25
26 ⁸ This provision is a substantial departure from the Original Term Sheet. As discussed above, under
27 the Original Term Sheet, \$1.5 million of the Development Funds was to be set aside for the Trustee to use
28 to determine the existence and amount of any Senior Liens and to settle or otherwise obtain a release of
such liens.

1 Creditors.⁹ If, on the other hand, the Intercreditor Agreement does not require that the 2nd
2 and 3rd Lien Lenders pay Other Recoveries to the 1st Lien Lenders, then the allowed
3 unsecured claims of the 1st Lien Lenders, and, to the extent necessary, the allowed
4 unsecured claims of LCPI, as a 2nd Lien Lender and as a 3rd Lien Lender,¹⁰ shall be
5 assigned to the Debtors' bankruptcy estates on behalf of the Trade Creditors to provide
6 the Trade Creditors with the equivalent of what they would have received under the 50/50
7 Distribution Scheme.¹¹ (See Ex. 1 at ¶ Q.)

21 ⁹ A true and correct copy of the Intercreditor Agreement is attached hereto as Exhibit "3." The
22 Intercreditor Agreement provides that any payments to the 2nd Lien Lenders and the 3rd Lien Lenders must
23 be paid over to the 1st Lien Lenders, until the 1st Lien Lenders are paid in full. (See Ex. 2 at §§ 2.1, 4.2.)
24 The Intercreditor Agreement also provides that the 2nd and 3rd Lien Lenders cannot benefit from avoidance
25 of the 1st Lien Lender's lien, rather, any proceeds received by the 2nd and 3rd Lien Lenders as a result of the
avoidance must be paid over to the 1st Lien Lenders. (See *id.* at § 6.5.) The 2nd and 3rd Lien Lenders are
not prejudiced by the 50/50 Distribution Scheme because the cash disbursed to the estates would have
otherwise been paid to the 1st Lien Lenders as required by the Intercreditor Agreement. The Trustee is not
requesting that the Court make a determination as to the Lien Lenders' rights under the Intercreditor
Agreement at this time.

25 ¹⁰ LCPI owns approximately 30% of the first lien debt, approximately 15% of the second lien debt, and
26 approximately 65% of the third lien debt.

27 ¹¹ Under this alternative, the estates will receive up to 100% of the *pro rata* distribution to the 1st Lien
28 Lenders and LCPI through an assignment of their unsecured claims in order to provide the estates with 50%
of the total recovery. Under either alternative, the 2nd and 3rd Lien Lenders will receive what they are
otherwise entitled to receive under the Intercreditor Agreement.

1 insurance policy.¹² The Trustee's Participation shall be immediately due and payable
2 upon the 1st Lien Lenders receipt of the Proceeds. (See Ex. 1 at ¶ R.)

3 6. Trustee Loss Collateral. On the Settlement Effective Date, LCPI on behalf
4 of the 1st Lien Lenders will deliver to the Trustee cash or irrevocable letters of credit
5 acceptable to the Trustee in the aggregate amount of \$500,000 (the "Trustee Loss
6 Collateral"). The Trustee Loss Collateral will be used to cover proven losses that occur
7 during the period from the Settlement Effective Date to the date of transfer of title to the
8 Properties (the "Trustee Maintenance Period") based on claims of simple negligence or
9 strict liability in connection with the ownership, operation, maintenance and management
10 of the Properties, to the extent such losses are not covered by insurance and subject to a
11 formula set forth in section G of the Term Sheet. Upon a termination event or the effective
12 date of the plan, Trustee will deliver any remaining Trustee Loss Collateral to LCPI. (See
13 Ex. 1 at ¶ G.)

14 7. Releases. On the Settlement Effective Date, the Trustee shall be deemed to
15 have released the 1st Lien Lenders and LCPI (in its individual capacity and as
16 administrative agent for the 1st Lien Lenders), and, except those entities specifically
17 carved out below, their respective affiliated parties, officers, directors, employees, agents
18 and attorneys, and the 1st Lien Lenders and LCPI (in its individual capacity and as
19 administrative agent for the 1st Lien Lenders) shall be deemed to have released the
20 Debtors' estates and the Trustee and the Trustee's agents and attorneys, in each case for
21 and from all claims (as defined in § 101(5) of the Bankruptcy Code and including any
22 claims that could be brought by or against the Trustee pursuant to the Bankruptcy Code)
23 other than the rights and benefits granted and preserved under the Amended Term Sheet,
24 including, without limitation, the allowed claims set forth in the Amended Term Sheet and
25 the rights to receive distributions based on those allowed claims. The Amended Term

26
27 ¹² To resolve the parties' dispute concerning the Original Term Sheet, the parties revised the term
sheet to make clear that the release of any and all Senior Liens is not a condition to the compromise.
Instead, to the extent any Senior Liens are not released, the amount paid to resolve such Senior Liens will
28 be deducted from the Proceeds prior to the calculation of the Trustee's Participation.

1 Sheet does not include a release of any claims or causes of action against any third
2 parties other than the 1st Lien Lenders and LCPI and their respective affiliated parties,
3 officers, directors, employees, agents and attorneys, and specifically does not include a
4 release of Lehman Lakeside, SCC Ranch Ventures, LLC, SCC Acquisitions, Inc., or SCC
5 Acquisitions, LLC, or any claims related to the acts of the owners of any of the Debtors
6 including any transfers of funds by any of the owners of any of the Debtors. If the
7 Settlement Effective Date does not occur for any reason, the foregoing releases will be of
8 no force or effect. (See Ex. at ¶ K.)

9 8. Termination Event. If a final order confirming the plan is not in effect by
10 February 28, 2011 (or such later date as may be agreed upon by the Trustee, LCPI, and
11 the Committee), then: (a) the 1st Lien Lenders will be granted relief from the automatic
12 stay to immediately foreclose on the Properties, and Trustee (and any party claiming by or
13 through any of the Debtors) shall be prohibited from interfering with such foreclosure; (b)
14 Trustee will retain the Administrative Funds and the Trustee's YFP free from the secured
15 claims of the Lien Lenders; (c) the 1st Lien Lenders will retain the balance of the
16 Development Account Funds; and (d) Trustee shall immediately pay over to the 1st Lien
17 Lenders the unused portion of the Remaining Development Funds, and the Trustee Loss
18 Collateral free of all claims and interests. (See Ex. 1 at ¶ T.)

19
20 IV. LEGAL ANALYSIS

21 Federal Rule of Bankruptcy Procedure ("Rule") 9019(a) provides:

22 On motion by the trustee and after notice and a hearing, the
23 court may approve a compromise or settlement. Notice shall
24 be given to creditors, the United States trustee, the debtor, and
indenture trustees as provided in Rule 2002 and to any other
entity as the court may direct.

25 Fed. R. Bankr. P. 9019(a).

26 "The bankruptcy court has great latitude in approving compromising agreements."
27 See *In re A & C Props.*, 784 F.2d 1377, 1380-81 (9th Cir. 1986). In approving a
28

1 settlement agreement, the court must find that it is fair and equitable, and the product of
2 good faith negotiations. See *id.* To this end, the court must consider the following criteria:

3 (a) the probability of success in the litigation; (b) the difficulties,
4 if any, to be encountered in the matter of collection; (c) the
5 complexity of the litigation involved, and the expense,
6 inconvenience and delay necessarily attending it; (d) the
7 paramount interest of the creditors and a proper deference to
8 their reasonable views in the premises.

9 *Id.*

10 Generally speaking, the court may defer to a trustee's business judgment in
11 deciding whether to settle a matter. See *In re Mickey Thompson Entertainment Group,*
12 *Inc.*, 292 B.R. 415, 420 (B.A.P. 9th Cir. 2003). The court need not conclude that the
13 proposed settlement is the best possible compromise, but only that the settlement is
14 "within the reasonable range of litigation possibilities." See *In re World Health*
15 *Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006). Similarly, the court need not,
16 and should not conduct a "mini-trial" on the compromised claims but simply determine that
17 disputes related to those claims exist. See *In re Schmitt*, 215 B.R. 417, 423 (B.A.P. 9th
18 Cir. 1997) ("When assessing a compromise, courts need not rule upon disputed facts and
19 questions of law, but rather only canvass the issues. A mini trial on the merits is not
20 required."); see also *In re Hermitage Inn, Inc.*, 66 B.R. 71, 72 (Bankr. D. Colo. 1986)
21 ("[T]he court's assessment does not require resolution of the issues, but only their
22 identification, so that the reasonableness of the settlement may be evaluated."). It is
23 enough that the court conclude the probability of success is uncertain. See, e.g., *In re*
24 *America West Airlines, Inc.*, 214 B.R. 382, 386 (Bankr. D. Ariz. 1997).

25 **A. The Probability of Success in The Litigation**

26 Approval of the Amended Term Sheet will resolve all of the existing disputes
27 between the parties. The Amended Term Sheet resolves the Estate Claims as well as the
28 LCPI Stay Relief Motion, the Trustee's Stay Relief Motion, and the disputes between the
parties related to the use of cash collateral and the sale of the Properties. Absent the
proposed settlement, the Trustee would continue his attempts to liquidate the Properties
and distribute the proceeds and other the cash on hand to the unsecured trade creditors;

1 however, to do so, the Trustee would have to prevail on a number of disputes with LCPI
2 as follows:

- 3 • The Trustee would first have to succeed on the Trustee's Stay Relief Motion
4 before the New York Bankruptcy Court to *attempt* to sell the Properties free and
5 clear of LCPI's liens, deny LCPI's credit bid rights, and to pursue the Estate
6 Claims;
- 7 • The Trustee would have to succeed on a motion before this Court to sell the
8 Properties free and clear of liens, with such liens to attach to the sale proceeds
9 pending the resolution of the Estate Claims, and to deny the right of LCPI and
10 the 1st Lien Lenders to credit bid;
- 11 • To distribute the sale proceeds to general unsecured creditors, the Trustee
12 would have to succeed on the Estate Claims to avoid the liens of LCPI and the
13 1st Lien Lenders and to preserve such liens for the benefit of the estates, and to
14 equitably subordinate the claims of LCPI and the 1st Lien Lenders; and
- 15 • Pending the proposed sale of the Properties, the Trustee would have to
16 succeed in defending against the LCPI Stay Relief Motions, and would have to
17 prevail on the Appeal and continue to obtain authority to use cash collateral to
18 preserve and maintain the Properties over LCPI's objection.

19 The Trustee and his professionals have evaluated the pre-petition transactions
20 between the Debtors and LCPI by reviewing and analyzing the loan and security
21 documents, closing statements, and financial reports surrounding those transactions. The
22 Trustee's counsel and counsel for the Committee have also conducted significant legal
23 research regarding the Estate Claims. The Trustee believes that the Estate Claims have
24 merit and that he can otherwise succeed in the proceedings discussed above. However,
25 the Trustee recognizes that litigation has risk and that he may not prevail. The Trustee's
26 success on the Estate Claims and in each of the above-referenced proceedings will
27 require the resolution of a number of legal and factual issues by this Court, all of which are
28 disputed by LCPI and the 1st Lien Lenders.

1 LCPI and the 1st Lien Lenders vigorously dispute the Estate Claims. LCPI disputed
2 a number of the Trustee's allegations in connection with the LCPI Stay Relief Motions and,
3 more recently, in opposition to the Trustee's Stay Relief Motion. For example, with
4 respect to the estates' equitable subordination claim, disputes exist regarding the
5 relationship between LCPI and Lehman Lakeside, whether LCPI's pre-petition conduct
6 was inequitable or otherwise actionable and whether such conduct, even if found
7 inequitable, is attributable to the other 1st Lien Lenders. With respect to the estates'
8 fraudulent conveyance claim, disputes exist as to whether the Debtors were insolvent or
9 undercapitalized at the time or because of the Loans and the related transfers and
10 encumbrances.¹³ LCPI asserts that, at minimum, the Lien Lenders undisputedly
11 advanced to the Debtors more than the current value of the Properties, and, therefore, the
12 Lien Lenders hold unavoidable liens in an amount that exceeds the value of the
13 Properties. In light of the issues raised by LCPI, the likelihood that the Trustee will
14 succeed on the Estate Claims is, at best, uncertain.¹⁴

15 For the Estate Claims to have value the Trustee must also succeed in defending
16 against the LCPI Stay Relief Motions. As LCPI is a debtor in its own bankruptcy case, any
17 redress for LCPI's alleged misconduct (and, thus, the repayment of creditors) would likely
18 have to come from the cash on hand or the value in the Properties (as opposed to the
19 payment of money damages), which is not possible if LCPI obtains stay relief and is able
20 to foreclose. In opposition to the LCPI Stay Relief Motions, the Trustee argued that,
21 among other things, that stay relief was not appropriate because the amount and validity

22
23 ¹³ LCPI and the 1st Lien Lenders contend, and have contended, that the Debtors' inability to satisfy its
24 creditors is the result of the collapse of the credit market generally and the real estate market in southern
25 California in particular, all of which and the severity of which could not have been reasonably contemplated
26 when the Loans were made. LCPI and the 1st Lien Lenders contend that there was nothing inequitable in
connection with the loan transactions which were governed and controlled by the loan agreements between
the parties. Accordingly, LCPI and the 1st Lien Lenders contend that the overriding predicate of the estates'
potential claims simply cannot be true: at the time the Loans were made, the Debtors were not insolvent and
were not unreasonably capitalized.

27 ¹⁴ Moreover, LCPI asserts that, even if the Trustee is successful in avoiding the Lien Lenders' liens,
28 absent equitable subordination, their unsecured claims would account for more than 85% of the general
unsecured creditor body, and would receive the overwhelming majority of any funds distributed to unsecured
creditors.

1 of LCPI's secured claims were in dispute. However, the Court could conclude that,
2 assuming the Trustee has viable claims against LCPI, such claims should not be
3 considered in the context of stay relief proceedings and could grant the LCPI Stay Relief
4 Motions, which would render the estates' equitable subordination and avoidance claims
5 meaningless and without value to the estates.

6 Uncertainty also exists regarding the Trustee's ability to sell the Properties to a third
7 party free and clear of liens. To succeed on a motion to sell the Properties free and clear
8 of the 1st Lien Lenders' liens and deny the 1st Lien Lenders' credit bid rights, the Trustee
9 would likely have to demonstrate that the liens of LCPI and the 1st Lien Lenders are
10 subject to a bona fide dispute. Again, LCPI disputes the Trustee's allegations, and the
11 likelihood the Trustee will succeed in proving that a bona fide dispute exists is uncertain.
12 Moreover, the Trustee must succeed on his stay relief motion before the New York
13 Bankruptcy Court prior to attempting to sell the Properties free and clear of LCPI's liens or
14 denying LCPI's credit bid rights, or the Debtors' estates could be subject to sanctions for
15 the willful violation of the automatic stay. Based on the initial hearing on the Trustee's
16 Stay Relief Motion, it is far from clear how the New York Bankruptcy Court will ultimately
17 rule in the absence of a settlement. (See Ex. 4, the transcript of the July 14, 2010 hearing
18 on the Trustee's Stay Relief Motion.) If the New York Bankruptcy Court denies the
19 Trustee's Stay Relief Motion, which is a possibility, the administration of the Debtors'
20 estates will be paralyzed.

21 In short, the likelihood that the Trustee will succeed on the Estate Claims, and in
22 selling the Properties and defending the LCPI Stay Relief Motions is uncertain. The
23 Trustee must prevail on a number of disputed issues of fact and law, which this Court has
24 yet to resolve, and succeed in obtaining stay relief in another forum. Accordingly, this
25 factor supports approval of the Amended Term Sheet.

26 **B. The Difficulties to be Encountered in The Matter of Collection**

27 The Trustee will likely be unable to collect money damages from LCPI. LCPI is a
28 debtor in its own bankruptcy case. Thus, even if the Trustee obtains a judgment against

1 LCPI, it will simply result in an unsecured claim, and he may be able to recover only a
2 small portion, if any, of the amount awarded. To the extent that the Trustee seeks to
3 subordinate the 1st Lien Lenders secured claim or avoid the 1st Lien Lenders' liens,
4 collectability is not an issue. However, if LCPI obtains stay relief, the estates' equitable
5 subordination and avoidance claims would essentially be meaningless, and the Trustee
6 will be unable to recover any value for the estates on account of the Estate Claims. The
7 likelihood that LCPI will obtain stay relief is greater if the Trustee is not able to prevail on
8 the Trustee's Stay Relief Motion as necessary to move these cases forward or if LCPI is
9 able to prevent the use of cash collateral to preserve the value of the Properties. Thus,
10 the Trustee faces difficulties in both collecting money damages from LCPI and preserving
11 the claims to recover value from the 1st Lien Lenders' collateral for the benefit of the
12 estates. Accordingly, this factor supports approval of the Amended Term Sheet.

13 C. The Complexity, Expense, Inconvenience, and Delay

14 It cannot be disputed that approval of the Amended Term Sheet will avoid costly
15 and protracted litigation between the estates and the 1st Lien Lenders. The Estate Claims
16 will be difficult to prove and expensive to litigate. The claims against LCPI and the 1st Lien
17 Lenders involve numerous complex and disputed issues of fact and law surrounding the
18 loan transactions between the Debtors and LCPI, LCPI's conduct related to the loan
19 transactions, and the financial condition of the Debtors. For this reason, litigation of the
20 Estate Claims would likely require significant discovery and a lengthy drawn-out trial.
21 Moreover, the Trustee could be forced to litigate the Estate Claims in New York, resulting
22 in additional administrative expense.

23 The Amended Term Sheet further avoids the costs and risks associated with (i)
24 attempting to sell the Properties to a third party free and clear of the 1st Lien Lenders'
25 liens, (ii) the ongoing disputes regarding the use of cash collateral to maintain the
26 Properties and the Appeal related thereto, and (iii) defending the LCPI Stay Relief
27 Motions, which were set for an evidentiary hearing and would likely necessitate discovery
28 by the Trustee. If the Trustee were required to litigate each and every dispute with LCPI

1 to conclusion, the estates could incur millions of dollars in professional fees and costs. In
2 addition to being expensive and fraught with risk, litigation of the estates' disputes with
3 LCPI would span two separate bankruptcy courts and, in the end, the estates' opportunity
4 to realize value from LCPI's asserted collateral could be permanently lost. The Amended
5 Term Sheet resolves numerous disputes and contested proceedings with the estates'
6 largest secured creditor, thereby saving the estates substantial administrative expense.

7 Litigation related to the Estate Claims and the other disputes between the parties
8 would significantly delay the conclusion of the Debtors' bankruptcy cases. Any
9 distributions to general unsecured creditors would likely be based on the outcome of the
10 Estate Claims, which could take significant time to resolve. Moreover, to sell the
11 Properties free and clear of LCPI's liens and to pursue the Estate Claims, the Trustee
12 would have to obtain stay relief from the New York Bankruptcy Court. If the New York
13 Bankruptcy Court denies the Trustee's Stay Relief Motion, the administration of the
14 Debtors' cases would be paralyzed as the Trustee would be unable to move the Debtors'
15 cases forward.¹⁵ The Amended Term Sheet, however, establishes a framework for the
16 sale of the Properties in the near future with the 1st Lien Lenders' consent and for the
17 preservation of the Properties in the meantime. Furthermore, approval of the Amended
18 Term Sheet will clear the way for Trustee and the Committee to immediately prepare and
19 propose a plan with the support of LCPI and move expeditiously towards confirmation.
20 Thus, approval of the Amended Term Sheet will provide creditors with some certainty
21 regarding the outcome of these cases.

22 Based on the foregoing, this factor supports approval of the Term Sheet.

23

24

25

26 ¹⁵ Rather, the Trustee would be forced to continue to hold the Properties and request use of cash
27 collateral to preserve and maintain the Properties over LCPI's objection. The longer the Trustee remains in
28 possession of the Properties, which consist of more than 5,000 acres, the greater the holding costs to
prevent vandalism, remain in compliance with municipal regulations, and otherwise prevent health and
safety issues from arising. With erosion and dust control, security and other necessary expenditures, the
Trustee would be required to spend several hundred thousand dollars a month.

1 D. The Paramount Interests of Creditors

2 The Amended Term Sheet will provide the estates with immediate funds and the
3 potential for substantial additional cash in the future. First, the Trustee will immediately
4 receive \$5.5 million in cash. Of this sum, \$3.5 million¹⁶ is guaranteed to the estates and is
5 available to administer the estates and for potential distribution to creditors, and \$2.0
6 million is available to preserve and maintain the Properties.¹⁷ Subject to the Court's
7 approval of the Yucaipa Settlement Agreement, the Trustee will also receive
8 approximately \$217,000, which sum represents a 50% share of the Yucaipa Funds. Thus,
9 upon the approval of the Amended Term Sheet, the Trustee will receive a grand total of
10 over \$3.7 million of unencumbered and unrestricted cash. Second, any proceeds from the
11 litigation to avoid and recover the Dividend, which could total approximately \$144 million,
12 or from other avoidance actions will be split 50/50 with LCPI (or the Lien Lenders). Third,
13 via the "Trustee's Participation," the estates are entitled to receive cash from the sale of
14 the Properties through the proposed plan or LCPI's subsequent disposition of the
15 Properties in the lesser amount of (a) unpaid allowed trade claims, or (b) 3.5% of the
16 recovery by the 1st Lien Lenders.

17 Without the proposed settlement, the non-lender unsecured creditors could receive
18 nothing. Again, there are a number of hurdles that the Trustee must overcome before the
19 Estate Claims will result in a distribution to the Debtors' unsecured creditors. To sell the
20 Properties to a third party without the 1st Lien Lenders' consent, the Trustee would likely
21 have to prove that a bona fide dispute exists as to the liens of the 1st Lien Lenders
22 justifying the sale of the Properties free and clear and denying the 1st Lien Lender's credit
23 bid rights. To attempt to take action with respect to LCPI's liens, the Trustee must prevail
24 on his stay relief motion before the New York Bankruptcy Court. Even if the Trustee is

25
26 ¹⁶ Under the Original Term Sheet, the Trustee was to receive only \$3.0 million to administer the
27 Debtors' estates.

28 ¹⁷ Any unused portion of the \$2 million set aside to maintain and preserve the Properties will be paid to
LCPI upon the sale of the Properties.

1 able to sell the Properties free and clear to a third party, the proceeds will still be subject
2 to the liens of the 1st Lien Lenders, and any disputes with respect to those liens will need
3 to be resolved *before* the proceeds could be distributed to general unsecured creditors.
4 While the New York Bankruptcy Court may terminate the stay to allow the Trustee to sell
5 the Properties, it appeared to be far less inclined to allow the Trustee to proceed with the
6 Estate Claims at this time. (See Ex. 4 at pg. 67, line 21-pg. 68, line 4, and pg. 76, lines 6-
7 19.)

8 The Trustee's success on the Estate Claims, defending against the LCPI Stay
9 Relief Motions, and selling the Properties over LCPI's objection is uncertain, and there are
10 numerous complex issues that impact the unsecured creditors' potential distribution. If the
11 Trustee is unsuccessful, any cash or value in the Properties would be transferred solely to
12 the 1st Lien Lenders on account of their secured claims. As asserted by LCPI, to the
13 extent that the Trustee is successful in avoiding the 1st Lien Lenders' liens, but not
14 subordinating their claims, the 1st Lien Lenders would still hold significant unsecured
15 claims against the estates and would be entitled to share in any distributions to unsecured
16 creditors on a *pro rata* basis. Similarly, the 2nd and 3rd Lien Lenders would be entitled to
17 distributions on account of any unsecured deficiency claims (although such disbursements
18 may have to be paid to the 1st Lien Lenders until paid in full). Moreover, it is likely that,
19 absent substantive consolidation, any unencumbered cash held by the Parent Debtor
20 would first have to be used to repay the Parent Debtor's creditors, which would include the
21 claims of the Lien Lenders, including any unsecured or subordinated claims of the 1st Lien
22 Lenders, before such cash could be used to repay the Subsidiary Debtors' creditors.
23 Thus, the proposed settlement not only provides these estates with immediate cash and
24 the potential for significant distributions in the future, but also provides a mechanism to
25 disburse those funds to the unsecured trade creditors.

1 **E. Approval of The Amended Term Sheet Will Not Alter or Prejudice The**
2 **Rights of Third Parties**

3 The Amended Term Sheet does not alter or prejudice the rights of any non-parties.
4 The Amended Term expressly provides that it is not intended to affect the rights of the 2nd
5 or 3rd Lien Lenders, except LCPI, or any other person who is not a party to the Amended
6 Term Sheet. (See Ex. 1 at ¶ B.) The confirmation of the plan contemplated by the
7 Amended Term Sheet (and the sale of the Properties through that plan) will be the subject
8 of a separate and fully noticed proceeding before this Court. Thus, the approval of the
9 Amended Term Sheet does not require the adjudication of any issues related to the
10 confirmation of the plan, the proposed distributions under the Plan, or the sale of the
11 Properties; rather, such issues will be brought before the Court in due course, and all
12 parties retain any existing rights related thereto. All interested parties will have a full and
13 fair opportunity to be heard in connection with confirmation of the plan and the sale of the
14 Properties.

15 In sum, the proposed settlement is fair and equitable, and in the best interests of
16 the estates. The Amended Term Sheet resolves multiple proceedings, thereby saving the
17 estates significant administrative expense. The Amended Term Sheet entitles the estates
18 to \$5.7 million to administer these cases and preserve the Properties. Of this sum, the
19 estates are guaranteed \$3.7 million upon approval of the Amended Term Sheet, even if
20 the proposed plan is not confirmed. The Amended Term Sheet also entitles the estates to
21 significant additional sums from any subsequent disposition of the Properties by LCPI or
22 from the pursuit of avoidance actions against third parties. The estates are not settling all
23 claims arising from the facts outlined above, but only the estates' claims against LCPI and
24 the 1st Lien Lenders. The estates are retaining their claims against other third parties to
25 avoid and recover the Dividend, and, due to the proposed settlement, the estates will have
26 funds to pursue such claims. Therefore, there is a real possibility that the estates will
27 receive significant cash in the future to distribute to unsecured trade creditors.

1 Accordingly, the Trustee respectfully requests that the Court approve the Amended Term
2 Sheet.

3

4 **V. CONCLUSION**

5 Based on the foregoing, the Trustee respectfully requests that the Court approve
6 the Amended Term Sheet, and such other and further relief as the Court deems just and
7 proper.

8

9 Dated: September 21, 2010

10 WEILAND, GOLDEN,
11 SMILEY, WANG EKVALL & STROK, LLP

12 By: 

13 ROBERT S. MARTICELLO
14 Attorneys for Alfred H. Siegel
15 Chapter 11 Trustee

16
17
18
19
20
21
22
23
24
25
26
27
28

Weiland, Golden,
Smiley, Wang Ekvall & Strok, LLP
650 Town Center Drive, Suite 950
Costa Mesa, California 92626
Tel 714-966-1000 Fax 714-966-1002

DECLARATION OF EVAN D. SMILEY

I, Evan D. Smiley, declare as follows:

4 1. I am a member of the law firm of Weiland, Golden, Smiley, Wang Ekwall &
5 Strok, LLP (the "Firm"), counsel for Alfred H. Siegel (the "Trustee"), the chapter 11 trustee
6 of the of the jointly administered estates of LBREP/L-SunCal Master I, LLC, LBREP/L-
7 SunCal McAllister Ranch, LLC, LBREP/L-SunCal McSweeny Farms, LLC, and LBREP/L-
8 SunCal Summerwind Ranch, LLC. I make this declaration in support of the Motion to
9 Approve the Amended and Restated Compromise Between the Trustee, the Official
10 Committee of Unsecured Creditors (the "Committee"), and Lehman Commercial Paper
11 Inc. ("LCPI"), in its individual capacity and as administrative agent for the 1st Lien Lenders
12 (the "Motion"). All terms as defined in the Motion are incorporated herein by this
13 reference. I have personal knowledge of the facts set forth in this Declaration and, if
14 called as a witness, could and would testify competently to such facts under oath.

15 2. A true and correct copy of the Amended Term Sheet is attached hereto as
16 Exhibit "1."

17 3. A true and correct copy of the Trustee's opposition to the LCPI Stay Relief
18 Motions is attached hereto as Exhibit "2."

19 4. On the Trustee's behalf, on June 17, 2010, the Firm caused a motion to be
20 filed in the New York Bankruptcy Court for relief from the automatic stay (the "Trustee's
21 Stay Relief Motion") to, among other things, sell the Properties free and clear of liens,
22 including the asserted lien of LCPI, and to deny LCPI's credit bid rights. The Trustee's
23 Stay Relief Motion was initially heard on July 14, 2010. Attached hereto as Exhibit "4" is a
24 true and correct copy of relevant excerpts from the transcript of the July 14, 2010 hearing
25 on the Trustee's Stay Relief Motion.

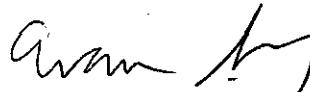
26 5. The New York Bankruptcy Court continued the hearing on the Trustee's Stay
27 Relief Motion from July 14, 2010, to August 18, 2010. At the continued hearing on August
28 18, 2010, counsel for LCPI advised the New York Bankruptcy Court of the Amended Term

1 Sheet. At the request of the parties, the New York Bankruptcy Court continued the
2 hearing on the Trustee's Stay Relief Motion to September 22, 2010, to allow LCPI to file a
3 motion to approve the Amended Term Sheet to be heard on that same date. On
4 September 2, 2010, LCPI filed its motion to approve the Amended Term Sheet, which will
5 be heard on September 22, 2010.

6. On the Trustee's behalf, attorneys with the Firm and I have reviewed and
7 analyzed thousands of pages of documents related to the Loans and the Debtors'
8 operations, which were produced or made available by Lehman Lakeside and SunCal
9 Management, or to which the Trustee had access pursuant to his appointment. Also, in
10 cooperation with the Committee's counsel, attorneys with the Firm have conducted
11 significant legal research regarding the Estate Claims. The decision to reach this
12 compromise with LCPI was made with the cooperation and coordination of the Committee,
13 who worked with the Firm and the Trustee to analyze the Estate Claims.

14 I declare under penalty of perjury that the foregoing is true and correct.

15 Executed on this 21st day of September, 2010, at Costa Mesa, California.



16
17 Evan D. Smiley
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

BINDING AMENDED AND RESTATED TERM SHEET AMONG
LCPI AS ADMINISTRATIVE AGENT FOR THE 1ST LIEN LENDERS, LCPI AS THE 2ND
LIEN LENDER, LCPI AS THE 3RD LIEN LENDER, THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS, AND THE CHAPTER 11 TRUSTEE

This Binding Amended And Restated Term Sheet dated as of August 18, 2010 (this “Term Sheet”) is by and among ALFRED H. SIEGEL, solely in his capacity as the chapter 11 trustee (the “Trustee”) of the administratively-consolidated estates of LBREP/L-SunCal Master I LLC (“Parent Debtor”), LBREP/L-SunCal McAllister Ranch LLC (“McAllister Ranch”), LBREP/L-SunCal McSweeny Farms LLC (“McSweeny Farms”), and LBREP/L-SunCal Summerwind Ranch LLC (“Summerwind Ranch”; with McAllister Ranch, McSweeny Farms and Summerwind Ranch being referred to collectively as the “Subsidiary Debtors,” and together with the Parent Debtor, as the “Debtors”) in their respective bankruptcy cases (the “SunCal Bankruptcy Cases”) now pending in the United States Bankruptcy Court for the Central District of California (the “California Bankruptcy Court”); THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS of the Debtors (the “Creditors’ Committee”); LEHMAN COMMERCIAL PAPER INC. (“LCPI”), in its capacity as administrative agent for the first-position secured lenders of the Debtors (the “1st Lien Lenders”); and is acknowledged and agreed as to certain provisions by one or more 1st Lien Lenders; by LCPI in its capacity as a second-position secured lender of the Debtors (“LCPI 2nd Lien Lender”); and by LCPI in its capacity as a third-position secured lender of the Debtors (“LCPI 3rd Lien Lender”), in order to reach interim agreement with respect to the distribution of certain funds, to establish certain parameters for a chapter 11 plan of reorganization for the Debtors and otherwise to establish the terms for globally resolving all disputes between the parties to this Term Sheet. Notwithstanding any references to the contrary contained herein, each and every reference in this Term Sheet to “Trustee” shall mean and refer to ALFRED H. SIEGEL solely and exclusively in his capacity as the chapter 11 trustee of the administratively-consolidated estates of the Debtors, and in no other capacity, and in no event whatsoever shall ALFRED H. SIEGEL have any personal liability of any kind, nature or amount as a result of this Term Sheet, including, without limitation, any performance, failure of performance, breach, default or other circumstance arising from or related to this Term Sheet, the implementation thereof, or the transactions contemplated herein.

That certain Binding Term Sheet Among LCPI As Administrative Agent For The 1st Lien Lenders, The Official Committee Of Unsecured Creditors, And The Chapter 11 Trustee, dated September 23, 2009 (the “Original Term Sheet”), is hereby superseded, amended, restated and replaced in its entirety by the terms hereof, and the Original Term Sheet is and shall be null and void and of no further binding force or effect.

DEAL TERMS

The Amended Compromise Motion

A. 1. The Trustee will seek approval of this compromise by filing an amended motion (the “Amended Compromise Motion”) under Federal Bankruptcy Rule 9019 within ten (10) calendar days of the Trustee’s actual receipt of a copy of this Term Sheet fully executed by all non-Trustee parties hereto. The Trustee shall file the Amended Compromise Motion in all of the SunCal Bankruptcy Cases and LCPI shall

concurrently file the Amended Compromise Motion in the LCPI bankruptcy case (the “LCPI Bankruptcy Case”, and together with the SunCal Bankruptcy Cases, the “Bankruptcy Cases”) pending in the United States Bankruptcy Court for the Southern District of New York (the “New York Bankruptcy Court”, and together with the California Bankruptcy Court, the “Bankruptcy Courts”) to obtain approval of this Term Sheet. The orders approving the Amended Compromise Motions (the “Compromise Orders”) must be obtained, entered in the respective Bankruptcy Courts and become “Final Orders” (as defined in paragraph A(2) below), by no later than November 1, 2010, unless this date is extended by mutual agreement of the Trustee, LCPI and the Creditors’ Committee. If the Compromise Orders have not become Final Orders on or before November 30, 2010, this Term Sheet, and the terms and provisions hereof and thereof shall become null and void and of no further force and effect, in which case the parties hereto shall have no further obligations hereunder or to each other with respect to the subject matter hereof. Immediately upon the last of the Compromise Orders becoming a Final Order, this Term Sheet shall be binding on LCPI, the Trustee, the Creditors’ Committee and each other party hereto (such date being referred to herein as the “Settlement Effective Date”). All parties hereto acknowledge that all other parties hereto intend to and will rely on the binding nature of this Term Sheet as of the Settlement Effective Date in moving forward with the Bankruptcy Cases. The terms of this Term Sheet will be incorporated into one or more plans of reorganization to be filed by the Trustee (the “Plan”) in consultation with, or jointly with, the Creditors’ Committee in the California Bankruptcy Court with respect to the SunCal Bankruptcy Cases. The Trustee and the Creditors’ Committee shall work together in good faith with LCPI to ensure that the Plan is consistent with this Term Sheet. If LCPI believes that the Plan filed does not materially conform to this Term Sheet, then LCPI shall have the right to object to the Plan solely with respect to the alleged material nonconformity with the Term Sheet, and the Trustee and the Committee agree that the Plan shall be modified, consistent with any ruling of the Bankruptcy Courts to make it conform materially with the Term Sheet. The Plan shall be subject to LCPI’s reasonable consent prior to filing, provided such consent shall not be withheld if the Plan is in a form and substance materially consistent with the Term Sheet.

2. “Final Order” means an order or judgment of either of the Bankruptcy Courts entered on the Bankruptcy Court’s docket where either: (a) the time to appeal or to seek review, remand, rehearing, or a writ of certiorari has expired and as to which no timely filed appeal or petition for review, rehearing, remand, or writ of certiorari is pending, or (b) if such an appeal or petition has been timely filed, there is no stay pending appeal or other injunction or court order in place which prohibits the enforcement of the Term Sheet.

3. Subject to the Settlement Effective Date, the Trustee and the Creditors’ Committee shall stipulate to LCPI being granted immediate relief from the automatic stay for the sole and only purpose of allowing LCPI in its capacity as administrative agent for the 1st Lien Lenders to record a new notice of default on behalf of the 1st Lien Lenders with respect to the Parent Debtor and Subsidiary Debtors so as to allow LCPI to re-commence the period within which a foreclosure sale may be conducted

with respect to such first position lien. This stipulation shall not include relief from stay for any other or further foreclosure or enforcement actions such as, but not limited to, recording of a notice of sale or the holding of a trustee's sale.

Allowance of Claim of LCPI; Claims Filed by 2nd and 3rd Lien Lenders

B. Upon the Settlement Effective Date, the claim of the 1st Lien Lenders in the aggregate amount of \$230,006,233.98 plus accrued and unpaid interest calculated through September 10, 2008 (the "Petition Date"), and accrued and unpaid legal fees shall be allowed in each of the SunCal Bankruptcy Cases; provided, however, the 1st Lien Lenders' allowed secured claims against the Subsidiary Debtors shall be in the amount of the 1st Lien Lenders' final credit bid under 11 U.S.C. Section 1123(a)(5)(d) pursuant to the Plan, as set forth in and adjusted in accordance with paragraphs E and F below (or, in the case of one or more successful bids by any third-party purchasers at the related sales pursuant to the Plan, the aggregate amount of such successful third-party bids), plus any amounts received by the 1st Lien Lenders as described in paragraph D below, and minus any amounts paid by the 1st Lien Lenders as described in paragraph H below. Any amount not deemed a portion of the 1st Lien Lenders' allowed secured claim shall be deemed an allowed unsecured claim against all of the Debtors as further described in paragraph F below. Proofs of claim have been filed in the Bankruptcy Cases by second position lenders (the "2nd Lien Lenders") and third position lenders (the "3rd Lien Lenders", with the 1st Lien Lenders, the 2nd Lien Lenders and the 3rd Lien Lenders being referred to collectively as the "Lenders"). The Lenders have alleged that their loans to the Parent Debtor are guaranteed by each of the Subsidiary Debtors. This Term Sheet is not intended to affect the rights, if any, of (a) the 2nd Lien Lenders other than LCPI 2nd Lien Lender, (b) the 3rd Lien Lenders other than LCPI 3rd Lien Lender, or (c) any other Person (as defined in the First Lien Credit Agreement dated January 19, 2006 (as amended) among LCPI, Parent Debtor, the 1st Lien Lenders, and certain other parties (the "First Lien Credit Agreement"), except to the extent that a Person is a party hereto, with such Person's rights being affected to the extent expressly provided herein).

Distributions Upon Settlement Effective Date

C. 1. On the Settlement Effective Date, the Trustee will retain \$3.5 million from those certain Parent Debtor funds previously held by First Bank & Trust and subsequently transferred to the Trustee for the benefit of the Debtors' estates, which funds are currently subject to the liens and rights of the 1st Lien Lenders (the "Development Account Funds"), for use by the Trustee in administration of the SunCal Bankruptcy Cases. The \$3.5 million of the Development Account Funds retained by the Trustee pursuant to this Term Sheet for use by the Trustee in administration of the SunCal Bankruptcy Cases shall hereinafter be referred to as the "Administrative Funds". The Administrative Funds shall be immediately available to the Trustee to pay administrative claims owing in the SunCal Bankruptcy Cases. In addition, upon the effective date of the Plan, any portion of the Administrative Funds not used to pay administrative claims as provided in the previous sentence or used or reserved to pay post-confirmation fees and costs of professionals of the Debtors' estates and/or

quarterly fees payable to the Office of the United States Trustee and court costs shall be available to make distributions to non-Lender creditors in respect of unsecured claims. In addition to the \$3.5 million in Administrative Funds, the Trustee shall also retain \$2.0 million of the Development Account Funds (the "Remaining Development Funds"), which Remaining Development Funds may be used by the Trustee solely to fund the ongoing current expenses of maintaining the real property owned by McAllister Ranch, McSweeny Farms, and Summerwind Ranch (together, the "Properties") pursuant to cash collateral orders of the California Bankruptcy Court in a manner consistent with the budget attached as Exhibit "A" hereto (the "Approved Budget"), subject to the budget variances allowed pursuant to Paragraph G below, or otherwise for uses for which the Trustee obtains the 1st Lien Lenders' consent (not to be unreasonably withheld) or which are approved by the California Bankruptcy Court after notice to the 1st Lien Lenders. The Approved Budget shall include quarterly fees payable to the Office of the United States Trustee and court costs. Any unused Remaining Development Funds will be transferred to the 1st Lien Lenders within five business days of the date that the Debtors no longer hold title to the Properties.

2. The funds currently on deposit with the Yucaipa Valley Water District and to be paid to the Trustee pursuant to that certain Settlement and Release Agreement (the "Yucaipa Settlement") between the Trustee and Oak Valley Partners, L.P. (the "Yucaipa Funds"), shall be split 50/50 between the 1st Lien Lenders and the Trustee. The Trustee's 50% portion of the Yucaipa Funds shall be referred to herein as the "Trustee's YFP"; and the 1st Lien Lenders' 50% portion of the Yucaipa funds shall be referred to herein as the "1st Lien Lenders' YFP." Following the entry of an order approving the Yucaipa Settlement by the California Bankruptcy Court (the "Yucaipa Settlement Order") and the Trustee's receipt of the Yucaipa Funds, the Yucaipa Funds shall be segregated by the Trustee from other funds in his possession relating to the Debtors and held by the Trustee, subject to the asserted liens, claims, interests and encumbrances of the 1st Lien Lenders. On the Settlement Effective Date, (a) the 1st Lien Lenders' YFP shall be paid to the 1st Lien Lenders free and clear of any claims or interests of the Trustee, the Debtors, the Debtors' estates and any party claiming by or through the Debtors, and (b) the asserted liens, claims, interests and encumbrances of the 1st Lien Lenders in the Trustee's YFP shall be avoided and preserved for the benefit of the Debtors' bankruptcy estates pursuant to 11 U.S.C. §§ 544 and 551, and the the Trustee's YFP shall immediately be available for use by the Trustee in the administration of the SunCal Bankruptcy Cases. The Trustee's YFP shall constitute additional funds of the Trustee and shall be treated as additional Administrative Funds (as Administrative Funds is defined in paragraph C).

Notwithstanding the foregoing, (a) if the Yucaipa Settlement is approved by the California Bankruptcy Court and the Trustee receives possession of the Yucaipa Funds but the Settlement Effective Date does not occur by the deadline set forth in paragraph A(1) above , then the Yucaipa Funds shall be segregated by the Trustee subject to the asserted liens, claims, interests and encumbrances of the 1st Lien Lenders, which liens, claims, interests and encumbrances may be challenged by the Trustee in accordance with applicable law and procedure and shall not be distributed or used without further order of the California Bankruptcy Court obtained on proper

notice and hearing, and (b) if the Yucaipa Settlement is not approved by the California Bankruptcy Court, the respective rights of the parties to the Term Sheet to all the funds currently held by the Yucaipa Valley Water District shall be preserved. Notwithstanding the foregoing, nothing herein shall be deemed an admission regarding the existence or validity of any lien or right asserted by the 1st Lien Lenders in the funds currently held by the Yucaipa Valley Water District.

D. Upon the Settlement Effective Date, the Trustee shall immediately transfer to the 1st Lien Lenders, free and clear of any claims or interests of the Trustee, the Debtors, the Debtors' estates and any party claiming by or through the Debtors, (a) all Development Account Funds less the aggregate \$5.5 million in Administrative Funds and Remaining Development Funds to be retained by the Trustee pursuant to paragraph C above and (b) the 1st Lien Lenders' YFP (all of the funds to be transferred to the 1st Lien Lenders hereafter referred to as the "1st Lien Lenders Retained Settlement Funds").

Sale Of Properties Under The Plan

E. The 1st Lien Lenders acting collectively in concert shall be the initial bidder with respect to each of the Properties and, subject to paragraph F below, shall credit-bid their allowed secured claims with respect to each Property in accordance with the bidding procedures set forth in paragraphs F and P below, as such bidding procedures may be further drafted and agreed upon by the parties hereto in consultation with a real property broker acceptable to each of the parties hereto (the "Approved Broker") and otherwise approved by the California Bankruptcy Court to the extent required (together, the "Bidding Procedures"). Properties for which the 1st Lien Lenders are determined to be the winning bidders pursuant to, in accordance with, and as more particularly described in the Bidding Procedures (the "Winning Bidders"), and which are purchased by the 1st Lien Lenders by way of credit bid, shall be transferred to the 1st Lien Lenders subject to (i) the lien of the 1st Lien Lenders, (ii) Senior Liens (hereinafter defined), and (iii) liens, claims, encumbrances or interests that satisfy clause (b), (c) and/or (d) of the definition of "Permitted Exceptions" set forth in the First Lien Credit Agreement (items described in this clause (iii), "Permitted Liens") Properties for which one or more third parties are determined to be the Winning Bidders shall be sold under the Plan pursuant to 11 U.S.C. Section 1123(a)(5)(d) free and clear of liens, claims, encumbrances or interests other than Permitted Liens.

F. The initial credit bids by the 1st Lien Lenders shall be in an aggregate amount which shall be at least equal to \$45 million (the "Aggregate Minimum Credit Bid Amount") and shall not exceed a maximum amount (the "Aggregate Maximum Credit Bid Amount"), with such Maximum Credit Bid Amount to be determined prior to the Settlement Effective Date by the 1st Lien Lenders in consultation with the Approved Broker. The Aggregate Minimum Credit Bid Amount and the Aggregate Maximum Credit Bid Amount shall be respectively allocated among the three Properties by the parties hereto in consultation with the Approved Broker prior to the Settlement Effective Date (the Aggregate Maximum Credit Bid Amount as so allocated in each case, the "Allocated Maximum Credit Bid Amount"). The 1st Lien Lenders shall be

entitled to increase their respective credit bid for each Property to an amount, to be determined prior to the Settlement Effective Date by the parties hereto in consultation with the Approved Broker, in excess of the highest competing bid for such Property, if any, up to the Allocated Maximum Credit Bid Amount with respect to such Property and up to the Aggregate Maximum Credit Bid Amount in the aggregate for all of the 1st Lien Lenders' credit bids with respect to the Properties (in each case with no set-offs, reductions or other defenses) in their discretion in accordance with the overbid procedures set forth herein. If one or more of the Properties are successfully bid upon by a qualified bidder (as the same may be more particularly described in the Bidding Procedures, each a "Qualified Bidder"), the Trustee may, subject to the right of the 1st Lien Lenders to submit a greater bid, sell such Property(ies) to such third party free and clear of all Liens (including the lien of the 1st Lien Lenders) other than Permitted Liens (hereinafter defined). Any Senior Liens and the lien of the 1st Lien Lenders shall each attach to any monies (other than the Trustee's Participation under paragraph R) received from the sale to a third party and such monies, net of any ordinary course sales costs and subject to the rights of any holders of Senior Liens, shall be paid to the 1st Lien Lenders. Payment of the Trustee's Participation to the Trustee shall only be made at such time when all Senior Lien claims have been resolved (through settlement, payment or otherwise) or Fidelity has accepted responsibility for all remaining Senior Liens. The 1st Lien Lenders shall have an allowed unsecured claim as set forth in paragraph B above. For the avoidance of doubt, in accordance with paragraph B above, the calculation of the 1st Lien Lenders' allowed unsecured claim shall take into account (1) the 1st Lien Lenders' aggregate credit bids for those Properties that were included in their winning bids pursuant to and in accordance with the Bidding Procedures (as the same may be more particularly described in the Bidding Procedures, each a "Winning Bid") minus any liabilities (including, without limitation, liabilities in respect of any Senior Liens) assumed by the 1st Lien Lenders in connection with the transfer of title to such Properties to the 1st Lien Lenders pursuant to such Winning Bids and (2) any proceeds received by the 1st Lien Lenders from the sale pursuant to the Plan of any of the Properties that were not included in the 1st Lien Lenders' Winning Bids to one or more third parties.

Use of Remaining Development Funds; Trustee Loss Collateral

G. During the period from the Settlement Effective Date until the transfer of title of all of the Properties to the 1st Lien Lenders and/or to any third party(ies), either pursuant to the Plan or by way of a foreclosure by the 1st Lien Lenders (the "Trustee Maintenance Period"), the Trustee shall be authorized to pay all expenses incidental to the ownership, operation and maintenance of the Properties from the Remaining Development Funds in amounts not to exceed those on the Approved Budget (plus a variance of 10% on a line-item basis of the amounts set forth therein), without the further consent of the 1st Lien Lenders. Immediately upon the Settlement Effective Date, LCPI on behalf of and as agent for the 1st Lien Lenders shall deliver to the Trustee cash or one or more irrevocable letters of credit acceptable to the Trustee in his reasonable discretion (together, the "Trustee Loss Collateral") in the aggregate amount of \$500,000 (in the case of cash, to be held in escrow and released solely in accordance with the terms and conditions of this Term Sheet). During the Trustee

Maintenance Period, in the event the Trustee incurs proven losses (not otherwise covered by insurance) based upon claims of simple negligence or strict liability in connection with his ownership, operation, maintenance and management of the Properties, but not in the event of any gross negligence or gross malfeasance on the part of the Trustee, the Trustee shall have the right to draw and recover from the Trustee Loss Collateral an amount not to exceed in the aggregate the lesser of (i) the amount of such losses multiplied by a fraction, the numerator of which is the amount of the 1st Lien Lenders Retained Settlement Funds actually paid over to the 1st Lien Lenders (including any unused Remaining Development Funds actually paid over to the 1st Lien Lenders pursuant to paragraph C above) and the denominator of which is the aforementioned amount plus \$5.5 million¹, and (ii) the full amount of the Trustee Loss Collateral, and in the event such recovery from the Trustee Loss Collateral is insufficient to cover such losses, the Trustee shall have the right, but not the obligation, to apply Administrative Funds to cover such losses. Upon the earlier to occur of (i) a Termination Event or (ii) the effective date of the Plan, the Trustee shall deliver any remaining cash Trustee Loss Collateral to LCPI for the benefit of the 1st Lien Lenders. Further, LCPI on behalf of and as agent for the 1st Lien Lenders hereby fully and forever releases and discharges the Trustee both in his capacity as trustee and in his individual capacity with respect to any acts or omissions occurring or claims arising in any way related to the subject matter hereof or the Trustee's actions or duties with respect to the Debtors or the Properties prior to the conclusion of the Trustee Maintenance Period, except to the extent of any gross negligence or gross malfeasance on the part of the Trustee.

H. To the extent that the Remaining Development Funds are inadequate to fund the Trustee's reasonable and necessary expenses with respect to the ownership, preservation and maintenance (but not development) of the Properties through and including January 31, 2011, the 1st Lien Lenders agree to pay for such reasonable and necessary expenses to the extent they are (i) consistent in nature and amount with expenses provided for in prior cash collateral budgets approved by the California Bankruptcy Court and (ii) in an aggregate amount not to exceed fifty percent (50%) of the amount of the 1st Lien Lenders Retained Settlement Funds actually received by the 1st Lien Lenders. These expenses shall be paid within ten (10) days following written request accompanied by reasonable back-up documentation by the Trustee to LCPI and LCPI's good faith determination that such expenses are reasonable and necessary; however, if there is a dispute as to the reasonableness or necessity of any of the expenses incurred by the Trustee, the California Bankruptcy Court shall retain jurisdiction to hear and determine the Trustee's motion to compel payment of such expenses. Pending payment of such expenses by the 1st Lien Lenders, the Trustee shall be authorized to use the Administrative Funds for the purposes set forth in this paragraph H.

¹ As an example only, in the case of an \$800,000 loss, if the amount of 1st Lien Lenders Retained Settlement Funds actually paid over to the 1st Lien Lenders is \$8.5 million, then the numerator will be \$8.5 million, the denominator will be \$14 million (i.e. \$8.5 million plus \$5.5 million), the resulting fraction will be 8.5/14 (= 0.6071428571) and the Trustee's recovery would be \$485,714.29 (\$800,000 multiplied by 0.6071428571) which is less than \$500,000 (i.e., the full amount of the Trustee's Loss Collateral).

Information Regarding Title Insurance Policy

I. LCPI has heretofore provided the Trustee with a complete copy of that certain Title Insurance Policy number 27-44-94-120334 (the “Title Insurance Policy”) issued by Fidelity National Title Insurance Company (“Fidelity”) for the benefit of LCPI as administrative agent for the 1st Lien Lenders for the Properties. Promptly upon execution of this Term Sheet LCPI will provide the Trustee with all documents and information reasonably related to the Title Insurance Policy and any and all claims made by the 1st Lien Lenders thereunder so as to allow the Trustee to comply with the requirements of paragraphs J and K below and otherwise to proceed with such matters to conclusion.

Resolution of Senior Liens; Availability of Title Insurance

J. The Trustee shall reasonably cooperate with the 1st Lien Lenders in their efforts to determine whether any Liens are superior to the 1st Lien Lenders’ lien in the applicable Properties and to determine the proper amount of any such superior Liens (“Senior Liens”); provided, however, the Trustee shall not be obligated to take any action that would cause the Trustee or the Debtors’ bankruptcy estates to incur material cost or liability.

Release

K. 1. As of the Settlement Effective Date, (A) the Debtors’ estates through the Trustee shall be deemed to have released the 1st Lien Lenders and LCPI (in its individual capacity and in its capacity as administrative agent for the 1st Lien Lenders), and, subject to the second-to-last sentence of this paragraph K, their respective affiliated parties, officers, directors, employees, agents and attorneys, and (B) LCPI (in its individual capacity as a 1st Lien Lender and in its capacity as administrative agent for the 1st Lien Lenders but not in any other capacity) and the 1st Lien Lenders will be deemed to have released the Debtors’ estates and the Trustee and the Trustee’s agents and attorneys, in each case for and from all claims (as defined in Section 101(5) of the Bankruptcy Code and including any claims that could be brought by or against the Trustee pursuant to the Bankruptcy Code) other than the allowance of the Lenders’ claims as set forth in paragraph B above and the rights to receive distributions based on those allowed claims. Notwithstanding the foregoing and for the avoidance of doubt, the releases to be exchanged shall not include claims and causes of action against any third parties other than the 1st Lien Lenders and LCPI and their respective affiliated parties, officers, directors, employees, agents and attorneys acting in their capacities as lenders, agents, loan administrators or advisors thereto, and such releases specifically shall *not* include a release of LBREP Lakeside SC Master I LLC (“LBREP Lakeside”); SCC Acquisitions, Inc. (“SCC Inc.”); SCC Acquisitions, LLC (“SCC LLC”); or SCC Ranch Ventures LLC (collectively with SCC Inc. and SCC LLC, “SCC”) or any claims related to the acts of the owners of any of the Debtors including any transfers of funds by any of the owners of any of the Debtors. Notwithstanding anything above, nothing in this paragraph K shall be deemed a release of the respective parties’ obligations under this Term Sheet. If the Settlement

Effective Date does not occur for any reason, the foregoing releases shall be of no force or effect.

2. As to the matters released pursuant to paragraph K(1) above, the parties hereby expressly waive all rights under the provisions of Section 1542 of the Civil Code of the State of California and any similar rights in any state or territory or under any similar statute or regulation of the United States or any of its agencies. Section 1542 of this California Civil Code reads as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

Each party waives and relinquishes any rights and benefits that any of them may have under California Civil Code Section 1542 pertaining to the subject of their releases set forth in paragraph K(1) above, and acknowledges that it is aware that it may hereafter discover facts in addition to or different from those which it now knows or believes to be true with respect to the matters released pursuant to paragraph K(1) above, but its intention hereby is to fully, finally and forever waive and release the claims released pursuant to paragraph K(1) above. Each party represents, warrants and agrees that this waiver is a material term of this Term Sheet, without which neither party would have entered into this Term Sheet.

Support of the Plan

- L. LCPI hereby agrees that, subject to its receipt of a Disclosure Statement and other solicitation materials in respect of the Plan, which Disclosure Statement and other solicitation materials (i) implement this Term Sheet and (ii) are not otherwise materially inconsistent with such terms, it being recognized that this Term Sheet shall not constitute an agreement by LCPI to take any step or action that would violate any provision of applicable bankruptcy law or any other applicable laws, and to the extent any provision hereof shall be construed as constituting such a violation, such provision shall be deemed stricken herefrom and of no force and effect without liability to any of the parties, LCPI will, as promptly as practicable following the California Bankruptcy Court’s approval of the Disclosure Statement and solicitation materials, present the Plan and related materials to the 1st Lien Lenders and recommend that the 1st Lien Lenders vote to accept the Plan, provided that to the extent the Plan contains additional terms and provisions unrelated to the substantive provisions of the Term Sheet, such additional terms and provisions are reasonably acceptable to LCPI and the 1st Lien Lenders. Also, subject to the occurrence of the Settlement Effective Date, LCPI and those other 1st Lien Lenders who have signed this Term Sheet agree, prior to the occurrence of a Termination Event, not to vote in favor of any other plan that fails to incorporate the substantive provisions of this Term Sheet until such time (if any) as the provisions set forth in paragraph T below are in effect.
- M. All 1st Lien Lenders who are on the “steering committee” are parties to this Term Sheet. All parties to this Term Sheet agree, prior to the occurrence of a Termination

Event, to support confirmation of the Plan provided the same is consistent in all material respects with the terms of this Term Sheet and does not contain material terms and provisions which have not been approved by LCPI and the "steering committee" of 1st Lien Lenders. Notwithstanding anything to the contrary contained herein, nothing in this Term Sheet shall constitute a representation or warranty by LCPI that the 1st Lien Lenders will vote in favor of the Plan by the requisite majorities under the Bankruptcy Code to obtain acceptance of the Plan by the class of 1st Lien Lenders nor shall LCPI have any liability in respect of such voting by the 1st Lien Lenders (subject to LCPI's obligation to recommend approval as provided above).

N. Nothing contained in this Term Sheet shall limit or interfere, in any way, with the ability of any 1st Lien Lender or member of the "steering committee" to transfer or assign its interests under the First Lien Credit Agreement. However, if such transferor or assignor has signed this Term Sheet, its transferees or assignees shall be bound by the provisions of this Term Sheet to the same extent such transferor or assignor was bound thereby. The transfer or assignment of all or part of such transferor's or assignor's interests under the First Lien Credit Agreement shall constitute a novation, whereby, such transferor or assignor shall automatically receive a release of its obligations under this Term Sheet by and to the same extent that its transferee or assignee is bound by the provisions of this Term Sheet.

Key Plan Provisions.

O. The 1st Lien Lenders will be classified as a separate class under the Plan.

P. The Plan will provide that the Trustee will sell the Properties (including without limitation any related personal property) pursuant to 11 U.S.C. Section 1123(a)(5)(d) and in accordance with the terms and conditions of this Term Sheet and the Bidding Procedures to the 1st Lien Lenders and/or one or more successful third party Qualified Bidders, as the case may be, free and clear of Liens other than (i) Permitted Liens in the case of a sale to a third party Qualified Bidder or (ii) Senior Liens, Permitted Liens and the Liens of the 1st Lien Lenders in the case of a sale to the 1st Lien Lenders pursuant to a credit bid.

Q. 1. The Plan will provide that until such time as the earliest to occur of (a) all holders of allowed claims, other than the Lenders, have been paid in full the allowed amounts of their respective claims according to their respective legal priorities, (b) the Lenders have been paid the full amount of their allowed claims, or (c) this Term Sheet terminates in accordance with the terms hereof, any recovery of proceeds from any avoidance action, litigation (including, without limitation, litigation in respect of any claims of fraudulent conveyance), asset disposition (excluding the sale of the Properties), or other recovery by the Trustee prior to or after Plan confirmation (the "Other Recoveries"), after payment in full of all allowed administrative and other priority unsecured claims in all four of the SunCal Bankruptcy Cases (collectively, the "Unsecured Priority Claims"), shall be split 50/50 between the 1st Lien Lenders (based on the understanding of the parties hereto that, and only if, all such proceeds

would be distributed to the 1st Lien Lenders under the Intercreditor Agreement, defined below in this paragraph) and the holders of allowed claims other than the Lenders (the “Trade Creditors”, which term excludes any and all claims by the Lenders). The portion of the Other Recoveries that is allocated to the Trade Creditors (the “Trade Creditor Allocation”) shall be distributed to Trade Creditors pursuant to a confirmed administratively-consolidated chapter 11 plan on a pro rata basis among those Trade Creditors based on the allowed amount of their respective claims. Distributions to Trade Creditors shall be made out of a single fund consisting of Other Recoveries that shall be administered by an appropriate fiduciary. This division of Other Recoveries shall be enforceable in the Bankruptcy Courts and any court of competent jurisdiction notwithstanding (1) the effect or terms of any agreement among the Lenders; (2) that assets, claims or causes of action may be held or pursued on behalf of one or only some of the Debtors; and (3) that Parent Debtor has few if any creditors other than the Lenders. After all Trade Creditors of the Debtors’ estates are paid in full, the balance of the funds in the Debtors’ estates, if any, shall be distributed to the Lenders in accordance with their respective priorities but subject to that certain Amended and Restated Intercreditor Agreement among the 1st Lien Lenders, the 2nd Lien Lenders and the 3rd Lien Lenders dated as of February 6, 2007 (the “Intercreditor Agreement”). If the foregoing allocations are either altered without the consent of the parties hereto or not approved by one or both of the Bankruptcy Courts, then any allowed unsecured claim of the 1st Lien Lenders (the “Assigned 1st Lien Lenders’ Claim”) shall be deemed assigned to the Debtors’ bankruptcy estates for the benefit of all non-Lender claims, free and clear of any claims, liens or interests of the 1st Lien Lenders, but without representation or warranty and only for the purpose of effectuating the 50/50 distribution scheme provided for in this paragraph Q. To the extent that the Assigned 1st Lien Lenders’ Claim does not provide the Debtors’ estates with the equivalent of what they otherwise would have received under the 50/50 distribution scheme, then any allowed unsecured claim of (x) LCPI 2nd Lien Lender (the “Assigned LCPI 2nd Lien Lender’s Claim”) and (y) LCPI 3rd Lien Lender (the “Assigned LCPI 3rd Lien Lender’s Claim”, and collectively with the Assigned 1st Lien Lenders’ Claim and the Assigned LCPI 2nd Lien Lender’s Claim, the “Assigned Lenders’ Claims”) shall each be deemed assigned to the Debtors’ bankruptcy estates for the benefit of all non-Lender claims, free and clear of any claims, liens or interests of the 1st Lien Lenders, LCPI 2nd Lien Lender and LCPI 3rd Lien Lender, but without representation or warranty and only to the extent necessary to provide the Debtors’ estates with the equivalent of what they otherwise would have received pursuant to this paragraph Q. The proceeds from the Assigned Lenders’ Claims shall be distributed first, to all unpaid Unsecured Priority Claims and second, to all Trade Creditors on a pro rata basis. After all of the Unsecured Priority Claims (to the extent that same were not previously paid out of the Administrative Claims) and Trade Creditors are paid in full, the remaining proceeds from (i) the Assigned 1st Lien Lenders’ Claim shall be paid to the 1st Lien Lenders, (ii) the Assigned LCPI 2nd Lien Lender’s Claim shall be paid to the 2nd Lien Lenders, and (iii) the Assigned LCPI 3rd Lien Lender’s Claim shall be paid to the 3rd Lien Lenders.

R. In addition, the Trustee shall be entitled to, and shall recover and receive from the Proceeds (hereinafter defined) of dispositions of the Properties, the lesser of (1) the amount sufficient to pay in full the allowed amount of the claims of the holders of allowed claims other than the Lenders to the extent not previously paid, and (2) 3.5% of such Proceeds (the "Trustee's Participation"); provided that, at the time of any such subsequent disposition the holders of allowed claims other than the Lenders shall not have otherwise been paid the full allowed amount of their claims. The Trustee's Participation in each portion of any Proceeds that consists of cash shall be immediately due and payable to the Trustee from the 1st Lien Lenders in cash upon the 1st Lien Lenders' receipt of such portion of the applicable Proceeds. The Trustee's Participation shall be transferred to the Trustee free and clear of Lender liens for the sole benefit of all allowed non-Lender unsecured claims. As used herein, "Proceeds" shall mean all cash and other property constituting proceeds of the disposition of each Property, including the proceeds from the sale of any of the Properties under paragraph E to a party other than the 1st Lien Lenders (but excluding any transfer of a Property to the 1st Lien Lenders pursuant to a credit bid) and including the proceeds from any disposition of the Property by the 1st Lien Lenders or any of their affiliates following their acquisition thereof pursuant to a credit bit, whether such proceeds are received in a single lump sum or on a piecemeal basis over time, less (a) customary and reasonable costs and expenses of the sale, and (b) cash and other property used to satisfy any Senior Liens not otherwise satisfied under the Title Insurance Policy or the Plan. For the avoidance of doubt, in the case of such property actually received that consists of promissory notes, equity interests (direct or indirect) in any entities taking title to the Properties and/or other deferred or contingent payment arrangements or mechanisms, the Trustee shall be entitled to receive, at the time such promissory notes, equity interests and/or deferred or contingent payment arrangements or mechanisms are received or implemented by the 1st Lien Lenders or their applicable affiliates or principals, a profits participation or similar contractual right to receive the applicable amount representing the Trustee's Participation from all cash actually received by such entities taking title to each Property from the disposition of such Property and by the Lenders and their applicable affiliates and principals in respect of such promissory notes, which profits participation or similar right shall be provided for in the operating, partnership, or similar governing documents of such entities and in such promissory notes or other deferred or contingent payment documentation (as the case may be), in a form and substance reasonably acceptable to the Trustee with Trustee being a direct contracted beneficiary of such provisions with the legal right to contractually enforce same. The California Bankruptcy Court shall retain jurisdiction with respect to the determination of the value of any component of each Proceeds. Without limiting the foregoing, if the 1st Lien Lenders form a joint venture with, or borrow funds from, any party, including any 1st Lien Lender or affiliates of a 1st Lien Lender to obtain funding necessary to develop one or more of the Properties or to maintain and/or operate the Properties prior to any disposition, the funds required to repay such unaffiliated equity or debt, as the case may be, shall reduce dollar-for-dollar the Proceeds for the applicable Properties. The 1st Lien Lenders agree to act in good faith to carry out the terms of this paragraph R and to effectuate this participation interest of the Trustee.

The 1st Lien Lenders will, at their sole expense, provide a report and accounting to the Trustee or the Trustee's successor-in-interest as soon as possible following receipt of Proceeds and shall provide semi-annual financial reports relating to the Properties. In addition, the 1st Lien Lenders will provide such documents and other information reasonably requested by the Trustee or the Trustee's successor in interest to monitor the 1st Lien Lenders' compliance with this paragraph R. LCPI shall provide the Trustee with information reasonably necessary to verify the amount of Proceeds. Finally, the Plan may contain such other reasonable provisions as may be required to effectuate the performance of the terms of this paragraph R.

S. Intentionally omitted.

Certain Rights and Releases Upon Termination Event

T. If a Final Order confirming the Plan shall not have been obtained by February 28, 2011 (or such later date as may be mutually agreed upon by the Trustee, LCPI and the Creditors' Committee, such later date in no event to be later than March 31, 2011) (a "Termination Event"), then:

- i. The 1st Lien Lenders immediately will be granted relief from stay to foreclose on the Properties. The Bankruptcy Court will grant this relief upon the presentation of an order by LCPI, accompanied by a declaration signed by an authorized representative of LCPI, confirming that a Termination Event has occurred. No party in interest, including without limitation the Trustee and the Creditors' Committee, shall be entitled to or permitted (A) to challenge the presentation of or entry of the order granting LCPI relief from stay with respect to the Properties, except to the extent no Termination Event has in fact occurred or (B) to challenge or otherwise interfere with the foreclosure of the Properties. Upon the entry of such order, the Trustee shall cooperate with the 1st Lien Lenders' foreclosure actions.
- ii. The Trustee shall retain the Administrative Funds and the Trustee's YFP free from the secured claims of the Lenders.
- iii. The 1st Lien Lenders shall retain the 1st Lien Lenders Retained Settlement Funds and the Trustee shall immediately pay over to the 1st Lien Lenders (A) the unused portion of the Remaining Development Funds, and (B) the unused portion of the Trustee Loss Collateral, in each case free and clear of any claims or interests (including without limitation any right to recovery) of the Trustee, the Debtors, the Debtors' estates and any party claiming by or through the Debtors.
- iv. Intentionally omitted.
- v. LCPI and the 1st Lien Lenders shall in no event be deemed to have waived any right to object to the substantive consolidation of the Debtors' cases.
- vi. Intentionally omitted.

vii. Except as provided in this paragraph T, this Term Sheet shall be of no further force or effect, including any obligation contained in paragraphs L and M.

No Substantive Consolidation

U. The parties hereto acknowledge and agree that neither any provision of this Term Sheet nor any of the transactions contemplated herein, including without limitation the contemplated terms and provisions of the Plan, do nor shall (i) effect substantive consolidation of any one or more of the Debtors with any one or more of the other Debtors, (ii) suggest that any such substantive consolidation is or might be possible, or (iii) affect the right of the 1st Lien Lenders to object to the substantive consolidation of any one or more of the Debtors with any one or more of the other Debtors. However, nothing here shall constitute a waiver of the rights of the parties to seek substantive consolidation of one or more of the Debtors if such is necessary or appropriate in the interests of creditors.

Miscellaneous Provisions

V. 1. Upon the last of the Compromise Orders becoming a Final Order, this Term Sheet shall be binding upon the parties hereto and their respective heirs, representatives, transferees, successors and assigns. Notwithstanding the foregoing, this Term Sheet and the rights and obligations hereunder may not be assigned by a party hereto without the prior written consent of the other parties.

2. LCPI will use reasonable efforts to obtain by September 30, 2010, an agreement from the 1st Lien Lenders tolling the statute of limitations within which the Trustee must file a complaint against the 1st Lien Lenders based on the operative facts alleged in the draft attached to his proof of claims previously filed in the LCPI chapter 11 case or to avoid the 1st Lien Lenders' asserted lien against the funds currently held by the Yucaipa Valley Water District until March 31, 2011.

3. In the event of any dispute between the parties hereto arising out of the subject matter of this Term Sheet, the prevailing party in such action shall be entitled to have and to recover from the other party its reasonable attorneys' fees and other reasonable expenses (including expert witness fees) in connection with such action or proceeding in addition to its recoverable court costs.

4. This Term Sheet shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Term Sheet except to the extent superseded by the laws of the United States. The parties hereto agree that the California Bankruptcy Court shall have jurisdiction to hear and to determine all matters, disputes and controversies related to this Term Sheet and the subject matter hereof, and each party hereby submits to the jurisdiction and venue of the California Bankruptcy Court with respect thereto. Notwithstanding the foregoing, if the California Bankruptcy Court will not accept jurisdiction or otherwise hear any such matter, then such matter shall be heard by the Orange County Superior Court for the

State of California, and each party hereby submits to the jurisdiction and venue of such court with respect thereto.

5. This Term Sheet contains the entire understanding between the parties relating to the transactions and matters contemplated hereby and all prior or contemporaneous agreements, term sheets, understandings, representations and statements, oral or written are merged herein and shall be of no further force or effect.

6. If any term, provision, condition or covenant of this Term Sheet or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Term Sheet, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Term Sheet shall be valid and enforceable to the fullest extent permitted by law.

7. Any alteration, change or modification of or to this Term Sheet, in order to become effective, shall be made by written modification hereof executed by all of the parties hereto.

8. This Term Sheet and any modifications, amendments or supplements thereto may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart. The parties may also deliver executed copies of this Term Sheet to each other by facsimile or by electronic delivery (e.g., .pdf), which facsimile or electronic signatures shall be binding upon the parties as if they were originals.

9. The parties hereto each agree in good faith to undertake such further actions and deliver such further documentation as may be reasonably necessary in order to facilitate the transactions contemplated in this Term Sheet and to implement the terms hereof, provided that no party shall be obligated to incur expenses or liabilities in connection therewith which exceed those expenses and liabilities which they would otherwise incur complying with the express terms hereof.

[Signatures appear on the following page]

Dated: _____

Alfred H. Siegel, solely in his capacity as the Chapter 11 Trustee
of the administratively consolidated estates
of LBREP/L-SunCal Master I LLC,
LBREP/L-SunCal McAllister Ranch LLC,
LBREP/L-SunCal McSweeny Farms,
and LBREP/L-SunCal Summerwind Ranch

[Signatures continue on the following page]

THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS
of LBREP/L-SunCal Master I LLC,
LBREP/L-SunCal McAllister Ranch LLC,
LBREP/L-SunCal McSweeny Farms,
and LBREP/L-SunCal Summerwind Ranch

By: _____

Lennar Homes of California, Inc., solely in its capacity as chairperson

By: _____

Dated: _____

[Signatures continue on the following page]

LEHMAN COMMERCIAL PAPER INC., as
administrative agent of the 1st Lien Lenders
to LBREP/L-SunCal Master I LLC,
LBREP/L-SunCal McAllister Ranch LLC,
LBREP/L-SunCal McSweeny Farms,
and LBREP/L-SunCal Summerwind Ranch

By: _____

Dated: _____

Name:

Title: Its Authorized Signatory

[Signatures continue on the following page]

ACKNOWLEDGED AND AGREED
SOLELY AS TO THE
AGREEMENTS MADE BY THE
1ST LIEN LENDERS HEREIN:

1ST LIEN LENDER:

[_____]

By: _____
Name: _____
Title: _____

Dated: _____

ACKNOWLEDGED AND AGREED
SOLELY AS TO THE
AGREEMENTS MADE BY
LCPI 2nd LIEN LENDER HEREIN:

LCPI 2nd LIEN LENDER:

[REDACTED]

By: _____

Name:

Title:

Dated: _____

ACKNOWLEDGED AND AGREED
SOLELY AS TO THE
AGREEMENTS MADE BY
LCPI 3rd LIEN LENDER HEREIN:

LCPI 3rd LIEN LENDER:

[Redacted]

By: _____
Name:
Title:

Dated: _____

EXHIBIT "A"

BUDGET

[See Attached]

EXH. A

In re: LBREP/L-SUNCAL MASTER I, LLC, et al.	CHAPTER 11 Debtor(s). CASE NUMBER 8:08-bk-15588-ES
------------------------------------------------	----------------------------------------------------------

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
650 Town Center Drive, Suite 950, Costa Mesa, CA 92626

The foregoing document described **MOTION TO APPROVE THE AMENDED AND RESTATED COMPROMISE BETWEEN THE CHAPTER 11 TRUSTEE, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, AND LEHMAN COMMERCIAL PAPER INC., IN ITS INDIVIDUAL CAPACITY AND AS ADMINISTRATIVE AGENT FOR THE 1st LIEN LENDERS; MEMORANDUM OF POINTS AND AUTHORITIES; AND DECLARATION OF EVAN D. SMILEY IN SUPPORT** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On September 21, 2010 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):
On September 21, 2010 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. *Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.*

Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on September 21, 2010 I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. *Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.*

Hon. Erithe Smith
United States Bankruptcy Court
411 W. 4th Street
Santa Ana, CA 92701

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

September 21, 2010
Date

Margaret Sciesinski
Type Name

/s/ Margaret Sciesinski
Signature

In re: LBREP/L-SUNCAL MASTER I, LLC, et al.	CHAPTER 11
	Debtor(s). CASE NUMBER 8:08-bk-15588-ES

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")

Joey R Abramson jralaw1@pacbell.net
Thomas Scott Belden sbelden@kleinlaw.com, ecf@kleinlaw.com
Joseph P Buchman jbuchman@bwslaw.com
Kathleen A Cashman-Kramer kcashman@psdslaw.com
Tara Castro Narayanan tara.narayanan@msrlegal.com
Scott C Clarkson sclarkson@lawcgm.com
Geoffrey Crisp geoffrey@smgarberlaw.com, michelle@smgarberlaw.com
Jonathan S Dabbieri dabbieri@shlaw.com
Keith S Dobbins kdobbinslaw@aol.com
Lei Lei Wang Ekvall lekvall@wglp.com
Marc C Forsythe kmurphy@goeforlaw.com
Heather Fowler heather.fowler@lw.com, colleen.rico@lw.com
Steven M Garber steve@smgarberlaw.com
Robert P Goe kmurphy@goeforlaw.com, rgoe@goeforlaw.com;mforsythe@goeforlaw.com
Marshall F Goldberg mgoldberg@glassgoldberg.com
Kelly C Griffith bkemail@harrisbeach.com
Michael J Hauser michael.hauser@usdoj.gov
Gil Hopenstand gh@lnbrb.com
Christopher W Keegan ckeegan@kirkland.com, emilee@kirkland.com;alevin@kirkland.com
Yale K Kim ykim@allenmatkins.com
Kerri A Lyman klyman@irell.com
John T Madden jmadden@wglp.com
Eve A Marsella emarsella@lawcgm.com
Robert S Marticello Rmarticello@wglp.com
Robert C Martinez rmartinez@mplex.com
Hutchison B Meltzer hmeltzer@wglp.com
Joel S. Millband jmiliband@rusmilband.com
James M Miller jmiller@millerbarondess.com
Ramon Naguiat rnaguiat@skadden.com
Kurt Ramlo kurt.ramlo@dlapiper.com, evelyn.rodriguez@dlapiper.com
Craig M Rankin cmr@lnbrb.com
Daniel H Reiss dhr@lnbrb.com
Todd C. Ringstad becky@ringstadlaw.com
Martha E Romero Romero@mromerolawfirm.com
Mark C Schnitzer mschnitzer@rhlaw.com
Alfred H Siegel ahstrustee@horwathcal.com, asiegel@ecf.epiqsystems.com
Gerald N Sims jerrys@psdslaw.com
Evan D Smiley esmiley@wglp.com
Autumn D Spaeth aspaeth@wglp.com
Derrick Talerico dtalerico@loeb.com, kpresson@loeb.com;ljurich@loeb.com
Andrew Troop andrew.troop@cwt.com, scott.griffin@cwt.com;jill.kaylor@cwt.com
United States Trustee (SA) ustpregion16.sa.ecf@usdoj.gov
Michael D Warner echou@warnerstevens.com
David R Zaro dzaro@allenmatkins.com

In re: LBREP/L-SUNCAL MASTER I, LLC, et al.	CHAPTER 11
	Debtor(s). CASE NUMBER 8:08-bk-15588-ES

II. SERVED BY U.S. MAIL

LBREP/L SunCal Master I LLC
3500 West Olive Ave., Suite 650
Burbank, CA 91505-5501
Debtor

Martin B. Greenbaum, Esq.
Greenbaum Law Group LLP
840 Newport Center Drive, Suite 720
Newport Beach, CA 92660

LBREP/L SunCal Master I LLC
2392 Morse Avenue
Irvine, CA 92614-6234
Debtor

Alan J. Friedman, Esq.
Irell & Manella LLP
840 Newport Center Drive, Suite 400
Newport Beach, CA 92660-6324

Christopher R. Mordy, Esq.
Peterson & Price, APC
655 West Broadway, Suite 1600
San Diego, CA 92101-3301

General Electric Capital Corporation
c/o Steven R. Glass, Esq.
Glass & Goldberg
21700 Oxnard St., Suite 430
Woodland Hills, CA 91367

Van C. Durrer, II, Esq.
Skadden Arps Slate Meagher & Flom LLP
300 S. Grand Avenue, Suite 3400
Los Angeles, CA 90071-3137

David F. Anderson, Esq.
Houser & Mouzes, APC
18826 North Lower Sacramento Rd., Suite H
P.O. Box 1397
Woodbridge, CA 95258-1397

Adam J. Soibelman
Stone Rosenblatt Cha
21550 Oxnard Street, Main Plaza, #200
Woodland Hills, CA 91367

William D. Coffee, Esq.
Songstad & Randall LLP
2201 Dupont Drive #100
Irvine, CA 92612

Emily E. Culler, Esq.
O'Melveny & Myers, LLP
400 South Hope Street
Los Angeles, CA 90071

Paul Couchot, Esq.
Winthrop Couchot
660 Newport Center Dr., 4th Floor
Newport Beach, CA 92660